AMERICAN BAR ASSOCIATION
SEPTEMBER 1938 JOVRNAL VOL. XXIV No. 9

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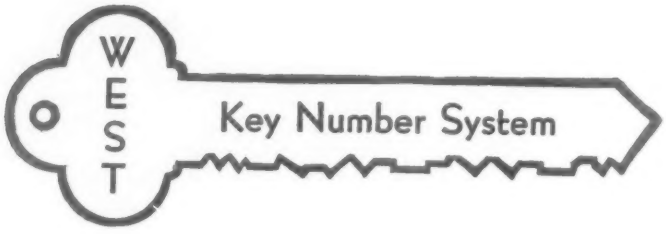

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BETTER ADMINISTRATION OF JUSTICE IS KEY-NOTE OF SIXTY FIRST ANNUAL MEETING

Work of Definitely Constructive Character Accomplished—Comprehensive Program of Judicial Reform Adopted and Will Be Pushed during Coming Year—House Debates Important Questions Raised by Committee on Administrative Law, Section of Legal Education and Other Bodies — Assembly Holds Four Interesting Sessions — President Vanderbilt's Address Is a Summons to Action, Action and Still More Action — President Hogan's Request for Appointment of Committee on Bill of Rights Is Granted—Distinguished Guests from Great Britain and Canada Address Association — Summary of What Was Done — Cleveland's Unforgettable Hospitality—San Francisco in 1939

THE Sixty First Annual meeting will rank as one of the great outstanding meetings of the association. It accomplished an immense work of a definitely constructive character. In particular it paved the way for reforms in judicial administration and procedure which promise to end the most serious defects charged against the administration of justice. The attendance was good, definitely ahead of the average during the past five years, and even greater than that at the notable Los Angeles meeting in 1935.

The work done at Cleveland was the culmination of the labors of committees and sections throughout a year of unusual activity. In the case of one section—that of Judicial Administration, the activity was unprecedented. Under the inspiration of President Vanderbilt and the supervision of Hon. John J. Parker, the Chairman, that section presented a comprehensive program for the reform of judicial administration and procedure. This program represented the results of the labors of seven committees, each headed by a man recognized as a leading expert on the subject with which it dealt and composed of members also carefully selected for their known competence. The Association may well be proud of this really monumental work accomplished in so short a time. And the State and local Bar Associations and all citizens interested in judicial reform will no doubt rally to these concrete and constructive proposals.

President Vanderbilt's address was a summons for the Bar to advance all along the line. He emphasized the responsibility of the Bar for improving the administration of justice. Proud as the record of the Association has been, he declared, "we must carry on the work heretofore begun to its logical conclusion. We must face the obligations which confront us presently. We must recognize the fact that all of the unreasoning destructive forces that wrought such havoc to the courts and to the profession a century ago are again at large, some of them in aggravated form. If democracy is to survive, and with it law and liberty, it will be because our people have faith in the integrity of our courts, from the highest to the lowest. It is not enough for us to tell the people through our Committee on American Citizenship, invaluable though its work has been, that the courts under our constitutional system are the bulwarks of individual freedom. The people must have such confidence in the efficiency, the integrity, and the wisdom of all of our courts as a matter of everyday experience that in times of stress they will instinctively feel safe in resorting thereto for the vindication of their rights. . . ."

The Association responded to the summons by adopting unanimously the proposals for reform presented at the meeting and by making them a cardinal point in the program of action for the coming year. No less sympathetic were the members with President Vanderbilt's exposition of the dangers which lurk in the growth of administrative tribunals. These are here to stay, President Vanderbilt said, but the dangers arising from the commingling of powers in these agencies, from the failure to treat administrative adjudication as judicial, with a corresponding protection of the rights of the individual, and from the legislative abdication which usually accompanies and is often partly the reason for their creation, were all set forth in vigorous language.

What is justice? The new President, Frank J. Hogan, thinks that it requires even more than efficient judicial administration and procedure, important as they are. It requires an alertness on the part of all ministers of the law, lawyers as well as judges, to detect infringement of the fundamental liberties of the individual and a determination to see that he shall not lack means to protect them. This is the explanation of the creation of the Committee on Defense of the Liberties guaranteed by the Bill of Rights. The action came in response to the appeal of President Hogan, made when he assumed the office of President of the Association at Cleveland. He then said:

"It seems to me to be important that the American Bar Association shall take immediate and practical steps to assure the American citizen, be he poor or rich, that if rights and immunities vouchsafed to him by the Bill of Rights are anywhere denied to him or threatened with denial, impartial and speedy investigation will be made, and, where the facts warrant it, there will be certainty of the assistance of competent lawyers, for defense and protection, in cases which otherwise might go undefended. . . .

"Violations of the rights and immunities which the Bill of Rights solemnly guarantees shall not be violated are not new; they are not infrequent; they are not confined to any one locality, political party or agency of government; they are not aimed at any one race or

religion or occupation. Denial of, or attack upon, the basic rights of *any* citizen constitutes a common danger to the rights of *all* citizens. Insistence upon observance of the provisions of the Bill of Rights is the concern of all Americans. Lawyers should be especially vigilant and ready in defending the liberties of the humblest as well as the most conspicuous. A lawyer drafted the Bill of Rights. Lawyers in the thirteen States obtained its ratification. It is for lawyers to insist upon the observance of every single guarantee in it, to see, at whatever risk, that those guarantees shall not be weakened or destroyed."

Other significant actions were taken at the meeting. For a complete list the reader is referred to the "Summary of Things Done at Cleveland" (p. 783). A unique feature of the meeting was the two legal institutes—that on Civil Procedure, which was held for three days just before the meeting convened, and that on "The Drafting of Wills and Trusts: the Use of Powers of Appointment and the Avoidance of the Rule against Perpetuities," which was held during the week when the Association was in session. The first institute was conducted by members of the Advisory Committee of the Supreme Court and the latter was a one-man affair, Prof. Harper Leach of Harvard University Law School being the lecturer. Both institutes were crowded and both were pronounced successes. Lawyers, old and young, sat through long sessions, intent on learning or relearning about the subjects under consideration. Many were frankly astonished at the wide interest manifested in these affairs, and it is safe to say that the lesson will not be lost to future makers of programs for the Association.

Most of the principal addresses were published in the August issue of the JOURNAL. They were all of a high order and were appreciated by their hearers. That of Lord Macmillan, who came over to represent the British Bench and Bar, on "Education and the Law" was the main feature at one of the gala night sessions. A large and brilliant audience assembled in the Music Hall of the Auditorium to hear him. Particular interest attached to the address of the Solicitor General, Hon. Robert H. Jackson, before the Section of Real Property, Probate and Trust Law, on "The Rise and Fall of Swift v. Tyson." The same interest was manifested in the address of Attorney-General Cummings, at the Association dinner under the auspices of the Section of Judicial Administration and the National Conference of Judicial Councils, in which he told of things which had been done to modernize the Federal administration of justice and things that remained to be done. The presence of two Justices of the United States Supreme Court and their addresses added greatly to the interest and distinction of the meeting. Mr. Justice Reed spoke at the Association dinner previously referred to, while Mr. Justice Roberts was one of the star performers at the annual dinner.

The address of Mr. E. H. Coleman, K. C., Under-Secretary of State for Canada, was delivered at the Association luncheon on Friday, and it was much enjoyed, as are always the words of a friend. The report on the "Work of the American Law Institute," at the second session of the Assembly, was presented by Judge Joseph E. Hutcheson, Jr., member of the Council of the Institute, and those who connect the idea of something a little heavy and labored with the word "report" would do well to turn to it and find that this is not necessarily the case.

These addresses, however, are only a fraction of those which were delivered during the meeting. All sections had a complete program and many highly significant addresses were delivered before those bodies, and also before the committees which held open forums. The address of Mr. Frederic R. Coudert, of New York, before the Section of International and Comparative Law, on "The Mexican Situation and Protection of American Property Abroad," was an outstanding pronouncement on a matter of great present importance. That of Chairman William O. Douglas, of the Securities and Exchange Commission, before the Section of Public Utility Law, was recognized as an official utterance of real significance. The address before the Junior Bar Conference by Paul Bellamy, editor of the Cleveland Plain Dealer, was also of special interest. These are only a few of the addresses which made the programs of the sections eminently worth while. It is a matter of regret that lack of space prevents the publication of some of this overwhelming wealth of material in this issue.

The social side of the Cleveland meeting was all that could be desired. The extent and variety of the entertainment provided could not be exceeded. All those who attended felt under a real obligation to the Executive Committee, of which Mr. L. C. Spieth was chairman, and the other local committees whose preparations had made the meeting so comfortable and enjoyable. Of the numerous entertainments provided perhaps the presentation of the play "Libel," in the Cleveland Playhouse, was the most unique and outstanding. The play, written by an English barrister who is also a dramatist, presented a gripping and dramatic story of mistaken identity in the form of an English Court trial. The court proceedings, technically exact, were also absorbingly interesting to the large audiences which saw the play at its three presentations. All the other forms of entertainment offered by the Cleveland hosts were also greatly appreciated. A reference to them will be found in another part of this issue. The President's reception was held Monday night, after the dinner of the Section of Judicial Administration, and was largely attended.

The dinner of the Association under the auspices of the Section of Judicial Administration and the National Conference of Judicial Councils was one of the events of the meeting. Judge John J. Parker, chairman of the Section, presided. Every seat was taken. The addresses of Mr. Justice Reed, Attorney-General Cummings and Judge William H. Grimball of the South Carolina Bench were all enthusiastically applauded.

ROSS ESSAY CONTEST, 1939

THE subject for the 1939 Essay Contest conducted by the American Bar Association pursuant to the terms of the bequest of the late Judge Erskine M. Ross is:

"To What Extent Should Decisions of Administrative Bodies Be Reviewable by the Courts."

The prize for the successful contestant is $3,000.

Full details as to eligibility and procedure will be printed in the October issue of the JOURNAL.

These details may be obtained before publication and thereafter by addressing the Executive Secretary, American Bar Association, 1140 North Dearborn St., Chicago, Ill.

ASSEMBLY AGAIN DEMONSTRATES ITS VITALITY

First Session of Assembly—Association Welcomed to Cleveland—President Vanderbilt Delivers Annual Address—Herbert Harley Awarded American Bar Association Medal for 1938—Resolutions Presented by Members—San Francisco in 1939!

LARGE and enthusiastic gathering fills great Music Hall of Auditorium for first session of Assembly. President Logue of Cleveland Bar Association and Mayor Burton extend cordial welcome, to which Chairman George Maurice Morris responds for Association. Memorials to three distinguished members who have recently died are read. President Vanderbilt delivers significant address, after which Herbert Harley receives award of the American Bar Association Medal for 1938. Announcement of San Francisco as next meeting place received with great applause. Members are given opportunity to present resolutions. A number are sent up and referred to the Resolutions Committee, which will report on them in due course. This first session, demonstrating the vitality of the Assembly and the sustained interest in its proceedings, furnishes auspicious opening to the whole highly successful meeting.

PRESIDENT VANDERBILT called the first session of the Assembly to order in the Music Hall of the great Cleveland Auditorium at 10:15 Monday morning. It was a large and impressive gathering. Mr. James C. Logue, President of the Cleveland Bar Association, extended the official welcome on behalf of that flourishing and hospitable organization. Mr. Logue spoke as follows:

Mr. Logue's Welcome

"Members of the American Bar Association, you have honored the lawyers of Cleveland in coming here for this Convention, which marks the sixtieth anniversary of the founding of the American Bar Association, and in that you have rendered the Bar Association of this city an unusual service. By your presence, you are furthering the aims and the ambitions of our local Bar Association for a greater leadership and for a more active and a wider participation and interest in public affairs.

"The long record of distinguished leadership of members of our profession in matters of high concern and in the molding of public opinion, so important in these days, is best maintained and strengthened by the cooperation of well-organized, active Bar Associations throughout the United States, acting in conjunction with our all-inclusive American Bar Association; and this convention, with its assemblage of distinguished persons from this country and from England and from Canada, has centered the attention of the public upon our Bar Associations, upon the lawyers and the work which they are doing and the leadership which they are taking. We can only express our gratitude to you by a whole-hearted and enthusiastic cooperation with you in our common aims and purposes, and especially in this constructive program of yours for the much-needed improvement and reform in the administration of justice.

"I am here this morning to bring to you greetings from the Cleveland Bar and while my message is greeting, we lawyers of Cleveland intend to devote the next five days to demonstrating the sincerity of our welcome. When at the conclusion of this convention you are packing your bags to go to the second best city in the United States, wherever that may be, if you say—as we hope you will—that the hospitality of the best city has left nothing to be desired and that the warmth and the sincerity of our greetings and our welcome have made you feel not as the guest but as one of the family, then don't wait another twenty years before you come back again, ladies and gentlemen, for twenty years is a long time between visits." (Applause)

President Vanderbilt then announced an address of welcome by the Honorable Harold H. Burton, Mayor of the City of Cleveland, "and one of our fellow members." Mayor Burton said in part:

Mayor Burton Welcomes Association

"We are happy to have you here. We built this building for just these things. You are honoring it by your presence here today. You have come to visit us and we want you to know something about us.

"We have no great battle field here except Lake Erie. The battle of Lake Erie was fought just a little west of here. It is the 125th anniversary this year of that battle, which was fought in 1813. Commodore Perry sailed by here and won his victory just west of here.

"There is another point of history that I know lawyers are always interested in when they come to visit us in Cleveland. Our titles go back to Connecticut. This part of Ohio is the Connecticut Western Reserve. Charles II gave the land all the way from sea to sea to Connecticut. Later on, that was restricted to as far as the Mississippi; then after New York and Pennsylvania took out their intervening share, there was still reserved by treaty to the State of Connecticut, 120 miles west of the Pennsylvania line for the width of Connecticut, and we are within that area.

"A half million acres of that, the very westerly end, was set aside as fire lands for those who had lost their property during the Revolution. This area was sold to the Connecticut Land Company, and General Moses Cleaveland, with an 'a' in the middle of his name, came out here in 1796, and

to this river, which is called the Cuyahoga. It means 'crooked' and that is the name of our county, called so after the river, and the word describes the river but not the county. (Laughter). He founded this city here upon that river because that was the best connection with the rivers running into the Ohio River near Akron at the Divide.

"He felt that some day this city would grow to be as large as Winthrop, Connecticut, and it did. Since then, we have grown from that Connecticut group that came here to settle, into a cosmopolitan city with 65 per cent of our population today either foreign-born or having one or both parents who are foreign-born.

"We are proud of our cosmopolitan population. We believe that we gain from it. We are a city that is known for its residences and known for the spirit of the community, and that spirit dates back to the days when Newton D. Baker was City Solicitor of Cleveland. He was later Mayor, and on the Public Square you will find an interesting monument to Mayor Tom L. Johnson who was the man who brought Newton D. Baker to Cleveland. He was Mayor, and Newton D. Baker was his Solicitor.

"You will find that monument set on the Public Square near the permanent soap box where everybody may have his say. At the base of Tom Johnson's monument, you will see an inscription by Edmund Vance Cooke, a Cleveland poet, which briefly gives his description of the spirit of our city—not only the spirit of Mayor Johnson, but of the city—in this way:

"Beyond his party and beyond his class,
This man forsook the few to serve the mass.
He found us groping leaderless and blind,
He left a city with a civic mind.
He found us striving, each his selfish part,
He left a city with a civic heart,
Ever with his eyes set on the goal,
The vision of a city with a soul."

HON. HAROLD H. BURTON
Mayor of Cleveland

"That was the spirit that came to us through that generation. At the foot of that street is the County Court House, and I will take a moment to tell you of it because I believe you will wish to visit it. It was built twenty-five years ago, when there was lots of money, and it is built the way you would like to have a court house built. It is a beautiful court house, one of the most beautiful trial courts in the United States."

Mayor Burton then gave a brief description of this imposing building, with its interesting artistic decorations,—among them two remarkable murals —and continued as follows:

"We welcome you to this convention. We welcome you to this building; we welcome you to the deliberations which are to follow. I believe the law is becoming more and more important, not less and less. As business becomes more complex and life becomes more complex, we know the Government has to be there to keep the rules straight, and the lawyers have to be there to know the rules. I look to the law of today as I see it from the administrative side. As we have more and more administrative law, the principal opportunity and obligation of the lawyer is to make sure that he does not hinder the progress of the world of today, but that he fits in with the progress of today like an extra gear in the machinery, that strengthens the force and the pull. He knows the modern machinery, he keeps it moving, and he is at the place where he can either stop and wreck the machinery or make our progress adequate to the needs of the times.

"When the nation practically broke apart after the Revolution, because of the Articles of Confederation, the men and lawyers of that day met and gave us the Constitution of the United States. We can meet the present difficulties with equal adequacy if we but devote our attention to them." (Applause).

Mr. George Maurice Morris, Chairman of the House of Delegates, delivered the response on behalf of the Association as follows:

Chairman Morris Responds for Association

"Mr. Mayor, born and schooled in the Eastern States, pioneering utilities counsel in the Far Western States, law teacher in a Central State, soldier in France, magistrate, skilled student of government but no child of practical politics—but, beyond all, when the public service releases you, a member of our profession—you, sir, are the man of all manner of men in Cleveland from whom we most gladly take the handclasp of welcome."

The audience applauded as Mayor Burton stood in the acknowledgment of the tribute. Chairman Morris continued:

"Anyone who is aware of the criticism which surges about men who engage in public affairs will have some understanding of us. Public persons hear with some amusement the contradictory statements which are made respecting their character. They sometimes wonder what sort of men they themselves really are. So have we wondered about ourselves.

"On the one hand, we are told that we are the

reactionary opponents of all true progress in public affairs. On the other, we are blasphemed against because we have not unanimously spoken out in protest against measures which seek allegedly to undermine the foundations of our highest laws. We are referred to by some as a group of middle-class little men who, lacking clients, gather annually to play petty politics and pass futile resolutions. Others say of us that we are the financially fortunate of the profession who, fattened upon the royal economy of large corporations, gather to impose our will upon the members of the profession who really do the work of the Bar. One man says of us that we would impose such ideals and standards of conduct upon the profession as only a dreamer would imagine could be attained. Another man says of us that we are the people who minimize the size of the type on the back of insurance policies to entrap the unwary layman.

As Some Others See Us

"On the one hand, we are told that by encouraging the participation in our councils of the Junior Bar, we confess the bankruptcy of our leadership, that we suffer and know it not, from mental anaemia, that we are dead from the neck up.

On the other hand, we are told that with the tenacity of the old and outworn, we cling to a command which we do not merit, that we are soft and fat and dead from the neck down.

"Again, a man says of us, when we challenge the propriety of his professional conduct, that we are partisan politicians, while another group criticizes us for our supine lethargy in not doing that sort of thing all the time. Some say of us that we have not had a new idea in a generation, that we are a sterile autocracy. Others say that our radical ideas as to the democracy of the profession are opening the governance of the bar to crackpots.

"We like to think that the truth lies between these extremists' views; that we are reasonably representative of the lawyers, the judges and the law teachers of America. Whether we veer to the left or to the right or, as we hope, are marching along down the middle of the road, our deliberations about to begin will inform you. For the moment, we are here, greater in membership and stronger in the faith we follow than ever before. Thus happy, we thank our hosts, all of us, for inviting us here, and say to you that we are very, very pleased to be with you." (Applause)

Memorials to Distinguished Members

President Vanderbilt then announced that the next order of business was the presentation of memorials to three beloved and distinguished members who were lately deceased, the Honorable Frank Billings Kellogg, the Honorable Newton D. Baker, and Mr. Justice Benjamin N. Cardozo.

The memorial to Mr. Kellogg was then read by Mr. Silas H. Strawn, of Chicago; that to Mr. Baker, prepared in cooperation by his partner, Mr. Joseph C. Hostetler, and Honorable W. Calvin Chesnut, was read by Judge Chesnut, of Baltimore; and the memorial to Judge Cardozo, prepared by Judge Irving Lehman, was read by Judge Finch, of the New York Court of Appeals.

At the conclusion of the third memorial, the great audience of the Assembly rose, at the suggestion of President Vanderbilt, to signify the unanimous adoption of the three tributes.

The Presidential Address

The Chairman of the House of Delegates took the chair while President Vanderbilt delivered his address. The subject, "United We Stand," pointed out and emphasized its central theme—the need for cooperative action on the part of the Bar in order to meet its responsibility for improving the administration of Justice. It was listened to with close attention and general approval, as it summed up the principles and program which guided President Vanderbilt during his year of vigorous activity in behalf of the Association.

Herbert Harley Receives Association Medal

Presentation of the American Bar Association Medal to one adjudged to have rendered great service to American jurisprudence was next on the program. It went to Mr. Herbert Harley, known to the profession for long years as originator of the idea of the American Judicature Society, editor of the Journal of that organization, and tireless and efficient spreader of the gospel of improved judicial machinery.

Mr. Harley was applauded as he rose in response to a gesture from President Vanderbilt and stood while the latter read the citation. At its conclusion he bowed and accepted the medal without formal reply. President Vanderbilt's remarks on this occasion appear elsewhere in this issue (p. 714).

1939 Meeting Goes to San Francisco

Secretary Knight at this point presented a communication from the President of the San Francisco Bar Association, addressed to the President of the American Bar Association. It read:

"The Bar Association of San Francisco desires to express its appreciation of the decision of the officers of the American Bar Association to hold its convention in San Francisco beginning July 10, 1939. Will you kindly deliver our message at one of your general meetings—that we extend a cordial invitation to all members of the American Bar Association to come to San Francisco in 1939. We promise them ample entertainment and a never-to-be forgotten time, and will do our utmost to live up to the late Chief Justice Taft's slogan, 'San Francisco knows how.'

"With sincere greetings,

"JOHN H. REARDON,
President of the Bar Association
of San Francisco."

The members present in the Assembly responded with hearty cheers to this message, which evoked great interest in the Association's return to San Francisco after seventeen years. Secretary Knight then made a number of announcements as to luncheon and dinner plans of various groups. He also called attention to the scheduled meeting of the Resolutions Committee, which would consider the resolutions to be presented at that session of the Assembly.

President Vanderbilt announced that the experiment of publishing a convention newspaper under Association auspices had been begun that day, with the aid of the Cleveland Legal News. Members would find copies of each day's issue in their hotels.

Offering of resolutions was next in order, and a number were announced by their sponsors, read by title and sent up to the Secretary. There was no

discussion at this session, but an opportunity was given to all those offering resolutions to present their views to the Resolutions Committee, and to discuss their proposals upon the report of that committee at a later session.

Secretary Knight then filed a list of the 268 members who had passed away during the past year, for inclusion in the record of the meeting. President Vanderbilt presented two of the Association's distinguished guests who were on the platform of the Assembly—Lord Macmillan and Mr. E. H. Coleman, Under-Secretary of State for Canada. The audience applauded and the eminent visitors bowed their acknowledgments.

Secretary Knight announced two vacancies in the list of Assembly Delegates, Mr. John F. Rhodes, of Missouri, and Mr. Grant B. Cooper, of California, having failed, because of urgent professional engagements, to come to Cleveland to register as present by Monday noon.

Various nominations were made. Two were eliminated because the state from which they came already had an Assembly Delegate, and the Constitution provides that no State shall have more than one such delegate. This reduced the nominees to three and on vote by ballot Mr. Robert F. Maguire, of Portland, Oregon, and Mr. Henry C. Shull, of Sioux City, Iowa, were declared elected.

Secretary Knight announced there was a vacancy in the office of State Delegate from Hawaii, New Mexico and Vermont respectively. Members from each of those jurisdictions were asked to gather immediately after the meeting and elect a delegate to fill the vacancy.

President Vanderbilt thereupon declared the first session of the Assembly adjourned.

Second Session of Assembly Hears Comprehensive Plan for Judicial Reform Presented by Section on Judicial Administration—Work of American Law Institute

SECOND Session of Assembly furnishes one of high spots of the meeting. Chairman Parker of the Section of Judicial Administration and the chairmen of seven of the section's important committee's dealing with fundamental aspects of the administration of justice address the meeting and present a comprehensive program for reforms. This is subsequently adopted by the House and will be pressed by the Association during the coming year. It fully answers the general desire that the Association take the lead in affirmative, constructive action in this field. Judge Joseph C. Hutcheson, Jr., presents report on work of American Law Institute in his felicitous style. Assembly delegates in House chosen. Chairman Morris of House reports proposed amendments to Constitution and By-Laws on which action will be had later both by House and Assembly.

AFTER calling the second session of the Assembly to order, at 10 o'clock Wednesday morning, President Vanderbilt announced that the first order of business was the nomination and election by ballot of five Assembly Delegates to the House of Delegates. The attendance showed sustained interest in the work of the Assembly.

Ex-Governor John M. Slaton, of Georgia, thereupon nominated George Maurice Morris of the District of Columbia.

Judge George H. Bond, of New York, nominated Judge William L. Ransom.

Mr. Harvey R. Hawgood, of Ohio, nominated Mr. Bert M. Kent of Cleveland.

Mr. Morris B. Mitchell, of Minnesota, nominated Mr. William W. Evans of New Jersey.

Mr. Walter L. Brown, of West Virginia, nominated Mr. Donald B. Hatmaker, of Chicago, an outstanding member of the Junior Bar Conference since its formation.

No other nominations being made, Mr. Robert W. Pharr, of Tennessee, moved that the list of

nominations be closed and the Secretary instructed to cast a unanimous ballot for the five nominees. There was some indication of dissent, but the motion was put and carried 99 to 37. The nominees were thereupon declared duly elected.

Work of the American Law Institute

President Vanderbilt said that "the American Bar Association has, from the very beginning, been deeply interested in the work of the American Law Institute. I think it may be justly said that the movement for the organization of the American Law Institute had its inception within the ranks of the leaders of the American Bar Association, particularly with Senator Elihu Root.

"We will now be privileged to listen to a statement, in accordance with our annual custom, of the work of the American Law Institute, this year by Justice Joseph C. Hutcheson, Jr., of the Circuit Court of Appeals of the Fifth Circuit, a member of the Council of the American Law Institute. I present to you Judge Hutcheson."

Judge Hutcheson thereupon read his report. It is printed in another part of this issue (p. 723).

Secretary Knight announced that the organization meeting for the newly authorized Section on Commercial Law would be held at 2 p. m.

Judicial Administration Section Reports

This brought the program to the outstanding feature of the Assembly Session—the reports from the Chairman of the Section of Judicial Administration and the seven committee chairmen of that section as to the work done during the past year. President Vanderbilt, by way of introduction, spoke briefly of the selection, organization and work of those committees. He felt he could truly say that better qualified committees had never been appointed in any section, and that, to his knowledge, no work of the Association had called forth such general commendation from the membership as the reports of these committees. He then called on Judge John J. Parker, chairman of the section, to present a summary of its work.

Remarks of Chairman Parker

Judge Parker began by stating that it seemed to him that the work of the Section of Judicial Administration was one of peculiar importance. The substantive law had kept well abreast of the developments of the times, but the adjective law had signally failed to do so. Lawyers had worked with a system of practice "which, in most of the States, was hopelessly outmoded."

In the Federal courts there would soon be put into effect, he said, what he regarded as the finest system of procedure which the profession in this country or in England had been able to achieve, but this was not enough as only a small part of the litigation of the country passes through the Federal Courts. He continued:

"We were fortunate in having as President of this Association this year a man who had a vision and who thought that we could help the administration of justice in this country if at this time, when the profession is procedure-minded, as it were, we should do something to reform procedure throughout the United States; so he asked me to appoint some committees in my section and I thought at that time it was the thing to do, so I appointed some committees. Then he put us to work and we have really done a great deal of work in the Judicial Section.

"The committees were selected with the utmost care, and to each committee was assigned a subject in the realm of procedure. We selected men who were known to be experts, because we knew that we didn't have time to make extended studies; and, fortunately, these studies were not necessary. The studies had already been made by the Committee on Rules of the Supreme Court, and by the American Judicature Society. What was needed was a committee of men with expert knowledge, who would go over the work that had been done and formulate in clear, succinct statements, standards by which men who were interested in judicial reform in the several states might be guided.

Chairmen of the Section's Committees

"The first committee was the Committee on the General Aspects of Administration. For that committee we chose as Chairman a man who had had wide experience both in the trial and appellate courts and who had served on the National Conference of Judicial Councils, Judge Edward R. Finch, of New York; for the Committee on Selection of Jurors, which we considered to be a matter of great importance in the administration of justice, particularly in the large centers of population, we selected a man who had had wide experience in that subject here in the City of Cleveland, Judge Dempsey.

"On the matter of pre-trial procedure, which was one of the subjects we thought deserved special investigation and which is one of the best of the modern developments for making the trial an investigation of truth and not a mere contest of wits, we selected the man who has done more in that line in the United States, I suppose, than any other individual, and who has made pre-trial procedure a success in the City of Detroit, Judge Joseph A. Moynihan.

"At the head of the Committee on Trial Practice, we put Judge W. Calvin Chesnut, a man who had wide experience in the state and federal courts before he went on the bench and who has been recognized as one of the outstanding federal judges in the United States since his appointment.

"At the head of the Committee on Appellate Practice, we placed the man who is probably recognized as the outstanding expert on that subject in the United States, Professor Edson R. Sunderland, of Michigan.

"As head of the Committee on Improvement of the Law of Evidence, we placed Dean John H. Wigmore.

"At the head of the Committee on Administrative Tribunals, we placed Mr. Ralph M. Hoyt, of Milwaukee.

"Committees Have Done Real Work"

"These committees, as the President has told you, have done real work. Their work has been appraised by the Council. The Council has gone over their reports section by section and has formulated definite recommendations which have been printed and which, of course, I shall not read here.

"In the Committee on Trial Practice report, we formulated fourteen recommendations, on Appellate Practice seventeen recommendations, on Improvement of the Law of Evidence fifteen recom-

mendations for adoption, and ten recommendations for further consideration, and so on. . .

"Our section has endeavored to formulate standards of procedure by which men who are interested in that subject may be guided in advocating reform in their several states. Let me say that of the sixty seven recommendations made, sixtv six were approved by the section, and the only other recommendation was not disapproved but was recommitted for further study, and that was not strictly speaking a matter of procedure at all but was a matter affecting court organization.

"In conclusion, I wish to make this suggestion to you. All the work that these committees have done will be in vain if we submit the report here and let it end at that. My thought is that the program of procedural reform which we have attempted to formulate should be made a special program of this Association during the coming year, and that committees should be set up in the several states looking to the securing of the adoption of these recommendations. It seems to me that the members of these committees might form a fit nucleus for the committees to be organized. I hope that this action will be taken. I hope that after hearing the Chairmen of these committees, you will agree with me that they, not I, have made a real contribution to the legal thought of our country, and their proposed reform is entitled to respectful consideration of the profession throughout the United States."

President Vanderbilt then introduced Chairman Edward R. Finch, Judge of the New York Court of Appeals. Judge Finch, he said, had for many years been tremendously interested in all phases of the improvement of the administration of justice, and had taken active steps in his own state and in the American Bar Association, as chairman of the Judicial Section, to put practical suggestions into effect.

HON. EDWARD R. FINCH

Remarks of Judge Edward R. Finch

Judge Finch began by stating that the report of this first committee deals with the general principles requisite for effective judicial administration. The committee had reported only those which received unanimous assent in the Council. It had two others which it deemed of great importance, but as there had been one or two dissents in the Council, they had not been reported. He continued:

"It has made four recommendations, and the first is that the courts should have control of, and be responsible for, their own procedure; that where the Legislature has taken over the procedure and has regulated by inflexible statutory authority, that authority should be transferred back from the Legislature to the court, so that there may be no division of authority, and so that the rules may not be inflexible.

"Why has legal procedure become so inflexible, and why has it been a hindrance often to doing real justice? It is because the courts are bound by statutory regulations, and when you come to decide a case and you try to go into the merits, if you run up against a statutory authority, you are bound by it. . . We have sworn to uphold the law. That is the law. So very often a lawyer reports to his client, 'They didn't reach the merits of your case. It went off on a procedural matter.'

"The minute transfer of procedure is made from the Legislature to the courts and the courts prescribe it by rule of court, right away that deciding a case other than on the merits goes out of the window. The court makes those rules of court handmaiden for the administration of justice, in that case as well as in any other. They are not breaking any law when they show that under the rules of the court they reach the merits of the case.

"You and I know that this prescribing of procedure by legislative act has developed a great mass of precedents dealing only with procedure, and it has led to the practice of law before the legislature, deciding cases sometimes solely by amendments to procedure in the legislation.

Courts Should Be Responsible for Own Procedure

"Gentlemen, there is nothing that can help to simplify procedure better than making the courts responsible for their own procedure and letting them regulate it by rule of court, just the same as every other body in the world that is trying to do a piece of work is responsible for its own procedure. . .

"The second proposition is this, that it is not enough for each judge to sit in his own jurisdiction doing the best he can. There is no one man, then, to be responsible for the administration of that judicial system in that state. The system in each state should be a unified system and it should have some one judge charged with the judicial administration of that system, so that if in one judicial district they have worked out a plan whereby judicial business may be disposed of better, the administrative judge will call it to the attention of every other judicial district. In this way, the most efficient judicial district in the United States will be a yardstick for every other judicial district.

"The best way for a judge to get such a plan is

through the help of a judicial council which can make the necessary research which he cannot, which can draw the necessary rules and amendments. So you should have a judicial council in your state to help your administrative judge, and that judicial council should represent every element of the community.

"In the first place, it should represent the Bench, but not have the Bench in control. In the second place, it should represent the Bar, but not have the Bar in control. In the next place, it should represent the layman, so as to get the interest of the client and the common sense of the layman. In the next place, it should represent the law school. In the next place, it should represent the chairmen of the Judiciary Committees of both houses of the Legislature. I think, too, that it ought to represent the interests of the press, because the press is the great mouthpiece to bring things to the attention of thinking people. . .

Reports of Judicial Work Necessary

"Now, then, having a judicial council, having the court responsible for its rules of court, having an administrative judge responsible for efficient administration of a unified system, being helped by a judicial council representing all the elements in the community, then they ought to be compelled to put forth their work that they have done quarterly, semi-yearly, or yearly, in the form of judicial reports, statistics which will reflect what they are doing, which will let the public see at once what they are accomplishing and will let the work of each particular judge be compared with the work of every other judge.

"When you have got those four main requisites . . . then you have got a system which contains within itself the means of making it operate efficiently, which is the thing they think the judicial system is not doing. It makes the judicial system operate efficiently so that it may render justice in its own day and generation and meet our modern needs. . ."

Judge Finch concluded by stating emphatically that the way to make the position of every lawyer in his community more worth-while, more dignified, was by showing that the American Bar Association was not merely passing resolutions but was really accomplishing something for the general good.

President Vanderbilt here announced that Judge Moynihan, of Detroit, chairman of the committee dealing with pre-trial procedure, had been called back by official duties and that Judge Van Buren Perry, Secretary for the Section, would report on the work of that particular committee. Judge Perry said, in part:

Work of Committee on Pre-Trial Procedure

"Pre-trial procedure, as you know, is a sort of preview of the cause, designed for the purpose of settling the pleadings in final form, determining when the case is actually ready for trial, making certain that all the witnesses are available, and all the testimony which has to be taken by deposition has been secured, making certain that no settlement can be worked out and, furthermore and most essentially, that the case has been stripped down to the essentials that still remain in the lawsuit.

"It contemplates, of course, that counsel shall fairly deal with the courts by conceding that which they know to be provable and by not wasting the time of courts or confusing juries by simply sitting back and objecting to testimony designed to prove what everyone knows actually does exist in the lawsuit. It strips the case down so that there is a much greater prospect of procuring a decision by juries upon the real merits of the lawsuit.

"The pre-trial procedure was originated, I believe, in Detroit, and Judge Moynihan certainly was largely instrumental in developing that practice. It arose out of sheer necessity there, for in law cases the courts in Detroit were forty-five months behind their calendar. Everyone knows that justice delayed is justice denied, and the courts were progressively getting even further behind.

"After this pre-trial procedure was developed —and, by the way, it was developed without any statute, by the exercise of the unquestionable, inherent rule-making power of courts—in a very short time that forty-five months of delay was brought down to ten months. So notable was the success of this procedure, that it was copied in Boston, in Los Angeles, and other large metropolitan centers, and I have before me these most interesting figures showing the results of pre-trial procedure in Boston.

Remarkable Results of Procedure in Boston

"In Sussex County, in which Boston is situated, during part of 1938 and all of 1937, a total of 10,763 cases were submitted to pre-trial procedure, as a result of which it was found that approximately 25 per cent were amicably and satisfactorily settled by the parties and approximately 10 per cent were dismissed for want of merit. In about 10 per cent of the cases the jury was waived and the cases were tried in the court without a jury. In about 5 per cent, the cases were continued for reference to a master, or for the making of payments by instalments under stipulations for judgments, and about 50 per cent of the cases went to the jury list for trial, and there were promptly disposed of.

"This saving of nearly five thousand cases from the trial calendar was indeed a most noteworthy contribution and enabled them in Boston to bring their calendars up to date to such a point that cases can be tried now within less than two months, as a rule, I am advised, and practically upon a day certain, with great resulting economy both to the taxpayers and to the litigants.

"While this pre-trial procedure was developed primarily in the metropolitan centers and was inspired by the necessity of clearing congested dockets, its very notable success in that field should not cause one to overlook the great benefit that may be derived from the practice in courts which do not necessarily suffer greatly from congestion, and in which there may be but one judge to conduct the pre-trial and perhaps later the actual trial. Our section, however, recommends that there be an itinerant judge provided if possible, to the end that the judge conducting the pre-trial procedure shall not later conduct the trial.

"This pre-trial procedure encourages conciliation and just settlements. It procures in advance of trial admissions of provable and undisputed facts. It not only shortens trials and results in economy, but by confining the trial to issues really in dispute promotes general respect for the courts as an effi-

cient instrument of justice, and renders much more satisfactory service. . ."

Chairman Chesnut's Report

The report of the committee on Trial Practice was then presented by its chairman, Judge W. Calvin Chesnut, of Baltimore. President Vanderbilt presented him as one who was "for years a distinguished practitioner and is now an equally distinguished judge of the United States District Court." Chairman Chesnut spoke as follows, in part:

"The subject matter of the report of our committee is one that will be thoroughly familiar at once to every trial lawyer, and our objective in making recommendations on 14 particular points in the trial of law cases has been to promote efficiency of, and avoid waste of time in, the trial.

"I wish also to point out just preliminarily one further fact with regard to the recommendations that have been made by the committee and have been approved by the Council of the Judicial Section. They do not represent any novelties nor any individualities. They represent the consensus of opinion of the advisory members of the committee throughout the forty-eight states and the deliberations of the seven members of the committee itself. We are not seeking for fadism in any way. The principle which has actuated us has been that of finding by research the best in the field of procedure in the trial of cases in the several jurisdictions of the United States and in England, and to boil them down to concrete recommendations for all the states, so that we may promote a tendency to uniformity of procedure, just as there has been a tendency to uniformity of substantive law throughout the United States.

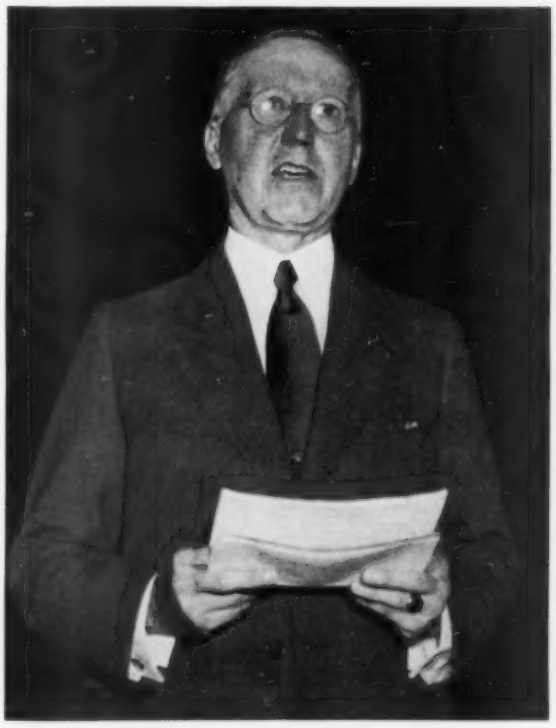
"The report deals with such familiar matters as the examination of jurors, with the selection of alternate jurors in a prospective long trial to avoid the possible chance of a mistrial, with the subject of judgments *non obstante veredicto,* with voluntary non-suit without prejudice, with promptness of judicial decision, with *ex-parte* injunctions and restraining orders, and technical matters of that kind. They are all developed in the report but the time does not permit me to individualize them, but merely to refer you to the report.

Two Matters of Outstanding Importance

"There are, however, two matters that are outstanding in importance in the field of the work of this committee, and they are: first, to ascertain and define the status of the judge with relation to the lawyers and to the parties and the witnesses in the conduct of the trial; and the second is with regard to the rules of federal procedure which Judge Parker has already spoken about.

"The important dominant thing in any law trial is the position of the judge. What is his status? I refer not only to the mere matters of form and manners and temperament and behavior of the court and the preservation of decorum and dignity which are of course essential, or should be considered essential, in every court, whether high or low, throughout the United States. Those are matters that ought to be implied rather than need expression.

"I am referring to the more substantial subject of the power of the judge with respect to the conduct of the trial. Is he to be a mere moderator or referee for passing on points of evidence and determining when the jurors can take a recess and how it shall be, or is he to be the governor of the trial, charged with the duty of seeing in so far as he can—subject of course always to the proper limitations of the freedom of counsel to fully present their cases—that justice is worked out in so far as possible with the available testimony in the case?



HON. W. CALVIN CHESNUT

"Of course, that he should be the governor has been the concept of our English law from which we inherited our American law for centuries, and it was worked out in England over a period of bitter controversy between the King, the judges, the lawyers and the people for several centuries. It finally crystallized in what was known as the Act of Settlement of 1700 when judges were appointed for good behavior and given the power independently to see that justice was worked out in the King's courts. We inherited that system here in the United States at the beginning but we departed from it as to the majority of the states. The departure has taken the form of no longer allowing the judge to explain the case to the jury verbally and orally. In most states now he is limited merely to the reading of academic instructions which have no life or blood in them and which give no very great help to the jury in the determination of the case.

How to Make Jury Trials Effective

"Trial by jury is a thing that is very important to be preserved; it ought to be made efficient, and it ought to be freed from the criticism which it often receives. But to have jury trials effective, jurors must be aided by competent practical instruction from the judge. The judge should have the

power, of course, to summarize the testimony, never of course to interfere with the entire freedom of the jury to decide the case ultimately on their own view of the facts. The law is for the judge, the facts are for the jury, but the jury are not trained in the weighing of evidence, and they ought to have advice and assistance of the judge.

"Now to make trials more efficient, we earnestly and heartily recommend that we should return to the common law conception of the functions of the judge, which has been so unwisely departed from in the majority of states of the Union. And if I have just a half minute, Mr. President, I want to say just one word to reenforce, from the practical standpoint, to American lawyers these rules of procedure for the federal courts which ought to be the standards for state procedure, subject to the pleasure of the several states in the future. . .

"These rules stand as a handbook of procedure which, if consulted, will probably in ten minutes or fifteen minutes end your problems. Here you have wrought out, by painstaking study of distinguished and eminent and accomplished American lawyers, the condensation and compression of federal practice into one book of less than a hundred pages, well indexed, large print, where you can find the answer to practically any procedural question which may be troubling you in the future."

Recommendations as to Jury Selection

President Vanderbilt announced that Judge John B. Dempsey, of Cleveland, chairman of the committee on Jury Selection, was detained by official duties and would not be able to make his report. He trusted that every member would read it and agree with its conclusions. The recommendations made were, first, that jurors should be selected by commissioners appointed by the courts rather than by some political official, and, secondly, that in the metropolitan centers some such system as that now in use in Cleveland, O., be adopted. It was the view of the committee and the council that these two recommendations would go a long way toward overcoming the difficulties existing in certain centers.

HON. SILAS H. STRAWN
Who Read Memorial to the Late Frank B. Kellogg

The committee on the Law of Evidence, President Vanderbilt stated, was headed by Dean Emeritus John H. Wigmore, of Northwestern University Law School. Dean Wigmore had given in his brief report of some thirty printed pages the essential things believed necessary to bring our law of evidence in line with the needs of the twentieth century. Unfortunately he had become temporarily indisposed after arriving in Cleveland and was unable to present the report in person.

The sixth committee, the President continued, is the Committee on Appellate Practice. No one familiar with the subject would doubt that the chairman was the outstanding authority on it in the United States. It was a genuine pleasure to present Professor Edson R. Sunderland of the Law School of the University of Michigan.

Chairman Sunderland Summarizes Report

Chairman Sunderland thereupon presented the following synopsis of the report of his Committee on Simplification and Improvement of Appellate Practice:

"The committee has sought to deal with the problem of efficiency in the administration of justice in the field of judicial review. The capacity of the courts to render the type of service demanded by modern society is being seriously challenged, and the committee has sought to analyze the causes of the present crisis in judicial administration, and to determine, so far as possible, the principles which ought to be employed in effecting a substantial reform.

"1. It condemns the common practice of allowing appeals as of right from an inferior court to a higher court by trial de novo. If the inferior court is so little worthy of respect that its judgments may be repudiated at the election of the losing party, the true remedy is a better inferior court, not an appeal.

"2. It recommends that appeals from superior courts should be allowed as of right only when the amount involved is sufficient to justify the economic burden, subject to the right of the court in its discretion, to allow an appeal in other cases when important questions of law are involved.

"3. It recommends the elimination of all jurisdictional hazards other than the single, simpler, definite and convenient act of filing a notice of appeal.

"4. It recommends that appellants be relieved from excessive supersedeas bonds which are commonly required to be twice the amount of the judgment.

"5. It recommends that assignments of error be required only in the form of points specified in the briefs, except where the appellant desires to include in the record only a part of the proceedings

Two Distinguished Guests

Lord and Lady Macmillan

and the appellee needs the assignments to protect himself against an inadequate record.

Possibilities of Developing Short Records Should Be Studied

"6. It recommends that a study be made of the possibilities of developing short records for the review of important questions of law, analogous to the practice in certifying questions of law.

"7. It believes that the printing of records is an unjustifiable extravagance, and recommends the use of the stenographer's original typewritten transcript as the final record of the testimony.

"8. It recommends that the original files be sent up to the reviewing court for such use as may be required, instead of laboriously copying them.

"9. It proposes that those parts of the record to which the parties wish to call the attention of the court be quoted or condensed in the briefs instead of being set forth in a complete and largely useless abstract covering the entire transcript.

"10. It recommends that the record on appeal should contain as much of the testimony in question-and-answer form as either party may wish to have inserted.

"11. It recommends that either the trial court or the reviewing court should have power at any time to authorize any amendment of the record necessary to disclose the case fully and correctly.

"12. It suggests more effective methods of analyzing and presenting the issues in the briefs.

"13. To limit the size of briefs, it recommends that only a designated number of pages be taxable as costs.

"14. It recommends that a systematic effort be made by the bar and appellate bench in each state and Federal circuit through joint committees of lawyers and appellate judges to examine the causes which are operating to limit the effectiveness of the oral argument, and to adopt such measures as may seem proper to restore it to the position of importance which it ought to occupy in our system of jurisprudence.

Recommends Study of "One-Man Decisions"

"15. It has examined the problem of "one-

man" decisions on appeal, and recommends that a cooperative study of the subject be made by the appellate bench and bar of each jurisdiction.

"16. It has examined the methods by which the capacity of the appellate court can be increased in proportion to the load of cases coming before it, and if the committee is continued it will make a further study of the possibilities of increasing the capacity of the court by authorizing it to sit in two or more divisions or departments.

"17. It recommends shorter opinions in cases where a mere statement of the facts and a reference to a controlling statute or decisions will clearly indicate the nature and ground of the decision.

"18. It recommends the abolition of all technical distinctions in the scope of the review between cases in equity and non-jury cases at law.

"19. It recommends that appellate procedure be regulated by rules of court.

"20. And finally, it recommends that appellate courts should have power to enter or order the proper judgment without the economic waste of a new trial whenever the record shows as a matter of law what that judgment should be."

In introducing Mr. Ralph M. Hoyt, of Milwaukee, Chairman of the Committee on Administrative Agencies and tribunals, President Vanderbilt called attention to the special importance of the report on that subject. It was confined to the field of State agencies and tribunals. "From this report we see very clearly, as Mr. Hoyt will doubtless point out in some detail," he said, "that there is a great deal more control in the courts of the administrative tribunals of our states than there is in the Federal system; that it presents a situation where, if the lawyers in the respective states will but give their attention to this matter presently, we may avoid in the states a great many of the difficulties which have arisen from time to time with respect to the administrative tribunals in the Federal system. I hope everyone will have the patience to read at length this entire report, because it will be a mine of information to all of you on the subject."

Report on Administrative Agencies and Tribunals

Chairman Hoyt spoke in part, as follows:

"This Committee on Administrative Agencies and Tribunals differs from the other six Committees in that, instead of dealing with matters of procedure in ordinary litigation, we have had as our field that tremendously intricate and involved and new subject, the relation of the administrative tribunals to the courts. That is a subject on which it is obviously unwise and actually impossible to arrive at conclusions worthy of your consideration after only a very few short months of study; and that is particularly true in view of the fact that we discovered, when we got into our work, that the basis of actual knowledge of the facts on which conclusions might be reached is almost non-existent in the books or anywhere you might look for them. In other words, there was no place where one could find out what the facts are as to a review of administrative decisions, particularly in the states.

"There are places where you could gather the facts as to the Federal Government, but in the states we had forty-eight possibly different, possibly similar systems. We did not know, and we conceived it to be our first duty on the committee, before trying to arrive at anything in the way of recommendations, to find out what the actual fact situation was in the states with regard to such tribunals. So we set about to compile, and we have inserted in our report, a summation of the methods of administrative review currently in use in the states, and in doing so we found out some rather interesting things.

Types of Cases in Which Complete Reviews Are Permitted or Denied

"Taking the six most important, or at least the most conspicuous subjects of administrative action in the state—public utilities first, securities, workmen's compensation, unemployment compensation, insurance laws and state income taxes—we found a pretty definite line of demarcation between the types of activity in which most of the states do permit the courts a complete review of the administrative determination and the type in which they do not. That line of demarcation, however it may have grown up, seems to be that matters of business and finance, matters other than those relating to employer and employee, in the states are generally committeed to the courts for a complete review of facts as well as law, whereas matters relating to the employer and employee relation are almost universally, or at least in the great majority of the states, given to the administrative tribunal for final determination of the facts.

"Thus we found that in over two-thirds of the states, determination as to public utility rates are subject to complete review on facts as well as law. In a great many cases, there is a completely new trial. Security regulation, when it is appealed to the courts, is almost always subject to complete review. I think thirty-six out of thirty-eight states which have administrative bodies permit the courts to review the facts as well as the law. But when we come to workmen's compensation, we find that in over two-thirds of the states the finding of facts by the administrative body is made conclusive and the court is not permitted to inquire into the facts at all.

"Whether that is a logical basis of distinction between the type of case that should be reviewed as to facts and the type that should not, is a matter to be studied and to be passed upon after we have had an opportunity to consider all of these facts that we have been gathering during the past few months.

A Little Paradox Stated

"It is generally considered, of course, that for a court to have to pass upon intricate, difficult technical matters of rate-making, evaluation and those other things for which the commissions are equipped with large and expert staffs, is a pretty difficult proposition, and yet you will have noticed in what I have said that it is just as to that type of administrative activity that the state laws do give the courts complete power of review; and it is when we come to the simpler matters, such as whether a man sustained an injury and how serious it was, just the sort of things that courts and juries are passing on all the time, that we find the state laws usually deny the courts any power of review and make the administrative decision final.

"Of course, that controversy as to whether decisions of administrative bodies on questions of fact should be reviewed, and to what extent is a tre-

(*Continued on page* 740)

HOUSE OF DELEGATES GETS DOWN TO BUSINESS

First Session of House of Delegates Hears Statement of Past Year's Work from President Vanderbilt — New Plan for Handling Section Reports More Efficiently — New Members of Board of Governors Elected — Action on Proposed Amendments to Constitution and By-Laws

PRESIDENT VANDERBILT calls the House to order. Chairman Morris announces new plan to enable House to pass more intelligently and expeditiously on recommendations of sections. Four committees, he states, have been appointed and to each has been assigned the duty of considering the reports of certain sections and advising the House. President Vanderbilt makes brief report concerning the work of the year. New members of Board of Governors are elected. Constitutional Amendment is approved clarifying terms of State Delegates by providing that those elected after 1938 shall take office at the end of the Annual Meeting next following their election. House shows willingness to give careful consideration to any proposals for changes in constitution, but rejects proposed constitutional amendments embodying such suggestions at this session. The question of the best method of nominating officers is referred to a committee for special study and report. The vitality of the section idea in organization is shown by creation of the Commercial Law Section.

THE first session of the House of Delegates, convening in the Ball Room of the Cleveland Auditorium, was called to order promptly at 2 o'clock Monday afternoon, July 25th, by President Vanderbilt. The earnest business-like approach of this body to its duties was soon evidenced. Secretary Harry S. Knight proceeded with the roll call; 144 members were present and a few others came later, giving the House nearly a full roster of its representative attendance.

Statement by Chairman Morris

After approval of the record already distributed, George Maurice Morris of Washington, D. C., Chairman of the House of Delegates, was asked by President Vanderbilt to make a statement. He was greeted with applause as he came to the rostrum to make a statement to the House, as required by its rules, concerning the business to come before it. Chairman Morris pointed out that the calendar for the day called for the election of the members of the Board of Governors, but that the election of other officers would be deferred until Friday, it being his opinion that there was no constitutional requirement that all the officers be elected at the same time. Chairman Morris then mentioned that he had appointed four committees of the House whose duty it would be to consider, before they were presented to the House, the recommendations of the sections which call for House action; concerning these committees, he explained further:

"The function of the committee in each instance is to call to your atention anything respecting the report of the section which the committee members think the House ought to know. Their functioning fills a dual capacity. They advise the members of the House generally that one of its agencies is observing the work of the sections. They also provide the sections with sympathetic consideration, by persons who are not members of the section but are members of the House, of the recommendations which the sections make. That, we hope, will avoid the difficulty we had at Kansas City. You will recall there that some of the section recommendations were rejected by the House, or referred by the House to the Board of Governors. It is hoped that by this present operation we will be able to have from our own body, as distinguished from section chairmen and section members, persons who can report to the House, thereby expediting action upon recommendations of the sections."

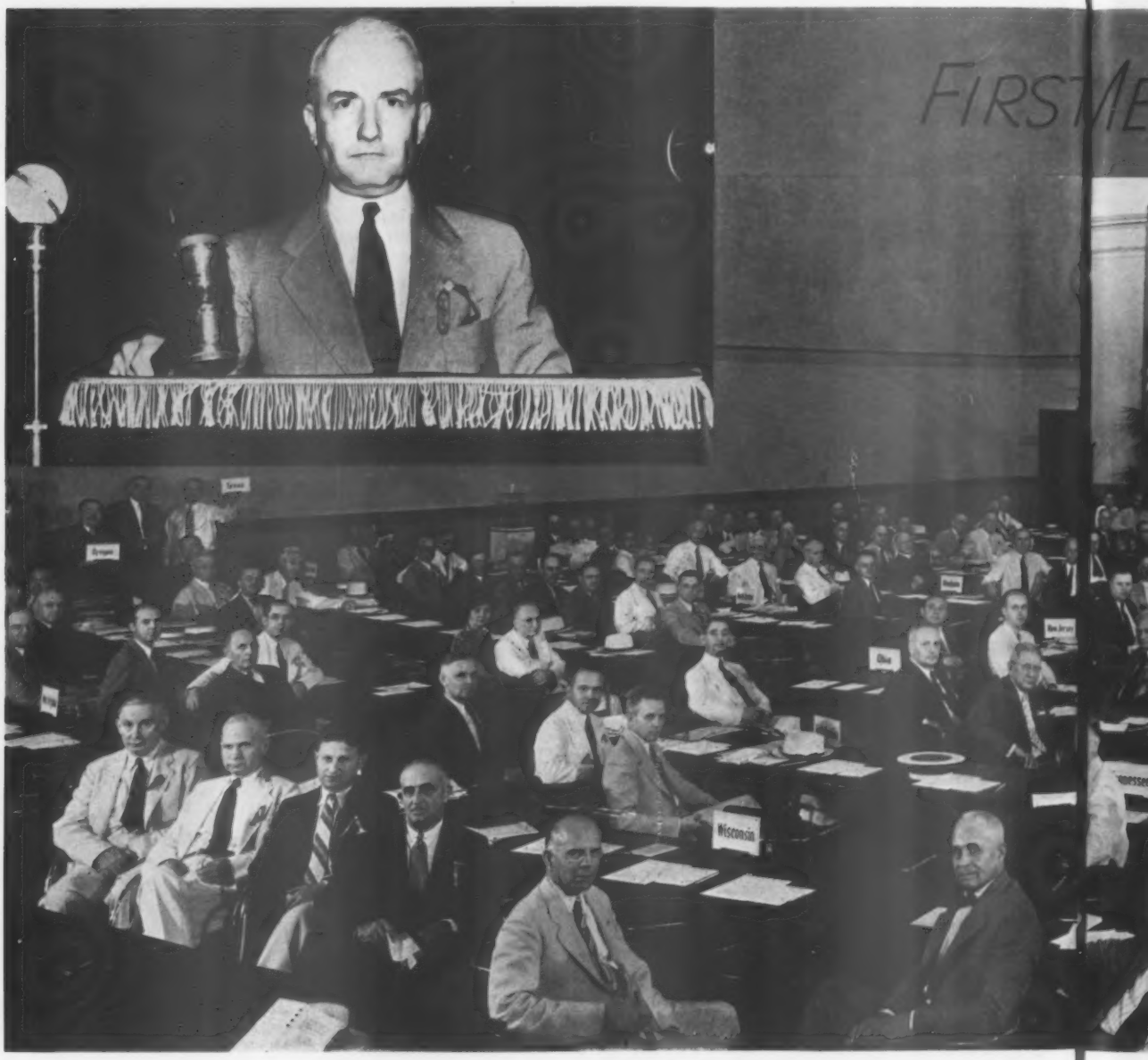
Committee on Credentials and Admissions Reports

Mr. William W. Evans of New Jersey then read the report of the Committee on Credentials and Admissions, containing among other matters notice of the retirement of certain members of the House and of appointments made to fill these vacancies. The report also called attention to the requests for representation in the House by the International Association of Insurance Counsel and the Maritime Law Association. It was the recommendation of his committee, Mr. Evans stated, that both requests be denied, because in one instance, it was felt that the international character of the organization precluded such representation with propriety, and, in the other, non-lawyers were included in its membership. The committee had also passed upon the applications and credentials of the Seattle Bar Association and the Dallas Bar Association as local associations seeking representation in the House of Delegates. In both instances the committee had approved of their qualifications. The recommendations were approved.

President Vanderbilt's Report

President Vanderbilt then made a very brief report concerning the work of the year. His statement dealt with:

(1) Membership—He cited a net increase of 1,709 members since June 30, 1937, resulting in a present all-time high in membership of 31,161. He mentioned the wholehearted cooperation and support which had been given by many in this regard



and observed that if everyone helped in the same way a membership of over 50,000 would result.

(2) Finances—There has been a restoration of the accumulated reserves of the Association (drawn upon heavily during the controversy as to the Supreme Court). He attributed this result to voluntary contributions received to reimburse the expenses incurred in the Supreme Court controversy, to continued support in the form of sustaining memberships, and to the cooperation of the official family in conducting their work economically.

(3) Sections—Progress was reported in the matter of improving the work of the sections and of bringing about coordination between the sections and the Association and among the sections themselves.

(4) House of Delegates—The House was said to be not only *representative* of the legal profession of the country but *responsible* to it, and, therefore, the importance of a strong House of Delegates could not be overestimated. It must be recognized that some state associations do not function effectively, and some have not given serious attention to the matter of their representation in the House of Delegates. The utility of regional meetings to increase the consciousness of such associations as to the importance of their relations with the American Bar Association was suggested as a profitable subject for investigation by the House.

(5) Arrangements of State Bar Meetings—The task of the President of the American Bar Association would be greatly simplified if some systematic arrangement in the scheduling of state bar meetings could be made. Cooperation in this respect would seem to be imperative, it was said, if the President is to continue his customary traveling to attend such meetings.

Attention Called to Work of Certain Committees

In his concluding paragraphs President Vanderbilt referred with approval to the work of the Committees on Unauthorized Practice of the Law, Law Lists and Duplication of Legal Publications. Increasing evidences of sound social-mindedness on the part of the Bar revealed the outstanding trend in Association activities, and the work of the Legal Aid Committee and of the committees of the Section of Judicial Administration have given demonstrations of this.

In closing, President Vanderbilt said:

"In conclusion, I wish to take this opportunity to thank the members of the House of Delegates for their generous cooperation and support throughout the year. Your friendship and your enthusiastic interest in the affairs of the Association will long be an inspiration to me. I have carried away with me an indelible impression of the tremendous interest that lawyers all over the country have in their profession, in the law, and in the preservation of liberty. I wish I had the power in me to communicate this impression to every member of the Bar of the United States, because I think it is one of the heartening signs in the troubled period of our history for the ultimate future and welfare of our country."

After giving his report, which was received with applause, President Vanderbilt turned the gavel over to Chairman Morris, who assumed the Chair.

Election of New Members of Board of Governors

The House next proceeded to the election of the members of the Board of Governors as prescribed by the Constitution, Article VIII, Section 3. Secretary Knight certified that the State Delegates

met on May 11 in Washington in pursuance of proper call and nominated for members of the Board of Governors, the following: 4th Circuit, George L. Buist, South Carolina; 6th Circuit, to fill vacancy caused by Newton D. Baker's death, Henry S. Ballard, Ohio; 7th Circuit, Carl B. Rix, Wisconsin; 8th Circuit, Thomas J. Guthrie, Iowa.

The Secretary further certified that nomination papers purporting to nominate George B. Harris, of Ohio, as a candidate for Board of Governors from the 6th Circuit, were filed on June 15, 1938, in pursuance of the provisions of the Constitution, with the secretarial office in Chicago, and that the first batch of those papers contained the names of 212 persons. It was subsequently found that 189 of those were members of the Association in good standing. The second batch of papers which arrived the day after, on June 16, contained the names of 18 persons, and 16 of those were found to be in good standing. He stated that the question as to whether or not this was a sufficient nomination was entirely up to the House of Delegates.

Chairman Morris said that the House had before it the question of whether or not the petition filed on behalf of Mr. Harris of Ohio was a petition which meets the requirements of the Constitution as to time of filing. At this point Mr. Harris rose from his seat in the Ohio delegation and stated that he did not believe that the petition was sufficient and that in any event he would withdraw. This being permitted, a motion directing the Secretary to cast a ballot in favor of the nominees as read was made and carried.

Report of Secretary Knight

The next order of business was the report of the Secretary, but Secretary Knight before making the report stated that he would like to certify the election of Robert F. Maguire, of Oregon, and Henry Shull, of Iowa, as Assembly delegates to fill the vacancies caused by reason of the failure of Grant B. Cooper of California, and John F. Rhodes of Missouri, to register before 12 o'clock on the opening day of the meeting.

In his report Mr. Knight stressed the changes in routines and mechanics at the Association Headquarters necessitated by the changes made in the Constitution and By-Laws. He stated that the first year of the new set-up had been particularly exacting, but that the second had been much helped by the first, and the headquarters staff had practically adjusted its routines to the mechanics incident to a bicameral annual meeting as compared with the old unilateral meeting, to the Spring meeting of State Delegates, to the multiplicity of correspondence incident to answering the inquiries about selecting State and Local Bar Association Delegates and to the occasional referendum votes, to name but a few of the changes prescribed by the organic law now in force.

Work of the Headquarters Office

Secretary Knight stressed further in his report the vast amount of work turned out at the Headquarters of the Association, pointing out that, in addition to the American Bar Association Journal, there was published and distributed periodically The Bar Examiner, The Unauthorized Practice News, Legal Notes on Local Government, and Legal Education News. He mentioned the reports of committees and sections and various rosters that have been prepared, published and distributed during the year, in addition to thousands of miscellaneous pamphlets and mimeographed material to the extent of 220 stencil cuttings per month. The average number of pieces of mail going out of the Headquarters Office every working day exceeded 1,400, he said. He noted the preparation of a complete 23-year index of the American Bar Association Journal and its publication in the 1937 Annual Report of the Association. The indexing and proofreading of the Annual Report and of the Advance Program, and the vast amount of planning and preparation that must be engaged in, in order that the Annual Meeting, with all of its section and committee meetings, luncheons, dinners and the like, may run smoothly were also brought to the attention of the House, as instances of the activity of the Headquarters office. The increasing membership of the Association and the expanding activities of sections all indicate, Secretary Knight concluded, that there was little danger that the life of the secretariat of the Association would become "depressingly monotonous."

Chairman Morris then called for the report of the Treasurer. Mr. John H. Voorhees came to the platform.

Treasurer Voorhees Reports

Mr. Voorhees stated that last year he was able to distribute at the first session of the House, printed copies of a summarized report of the Treasurer, but that this year he was unable to do that because the end of the fiscal year, which closes on June 30, was too near the date of this Annual Meeting in July, whereas the meeting in Kansas City was not held until the end of September. He went on to say that the summarized report would be prepared as soon as possible, and if desired by the House, copies of it would be mailed to each member in advance of the time they will receive it in the annual report volume of the Association.

Chairman Morris inquired if any action was desired with regard to the forwarding of the summary of the Treasurer's report to the members of the House. A suggestion being made that the members of the House could act more intelligently upon matters which were on the calendar if they knew the situation presented by the report as between recurring and non-recurring income and recurring and non-recurring expenses, Mr. Voorhees agreed to furnish further information to the House as soon as possible.

Committee on Rules and Calendar Reports

The next order of business was the report of the Committee on Rules and Calendar which was presented by Mr. Guy Richards Crump of California, chairman. It was agreed without objection that the matters contained in the report should be voted upon separately as presented, instead of waiting until the conclusion of the report.

The first item reported upon was the effect of the amendment to Section 5, Article V, of the Constitution, adopted at the Kansas City meeting in 1937, which provided for "staggering" of the terms of State Delegates through the intermediate election of one-third of the delegates for each one, two, and three-year terms. It had further changed the former provisions of Article V, Section 5, by saying: "The term of each State Delegate shall begin with the beginning of the annual meeting next follow-

ing his election and shall end at the beginning of the third annual meeting thereafter." The adoption of this 1937 amendment had raised two questions of construction: (a) Did the amendment to Article V, Section 5, impliedly repeal Article XIII, Section 1, which provided that members of the former General Council should serve out their full three-year term as State Delegates? (b) When would State Delegates elected in 1938 take office?

As to (a) the Board of Governors at its midwinter meeting had stated its views by approving a resolution (which itself had been previously adopted by the Board of Elections) construing the amendment as not involving in any way the constitutional provision that members of the former General Council were to be continued in office as State Delegates until the expiration of the term for which they were elected. Mr. Crump stated that his committee accepted this construction of the amendment and recommended its adoption to the House. He added that the effect of it was that the terms of office of incumbent State Delegates, elected prior to 1938, would expire at the close of the Cleveland meeting. A motion to approve the construction carried without debate.

Constitutional Amendment Relating to State Delegates

Turning to the question of when State Delegates elected in 1938 were to take office, Mr. Crump pointed out that the adoption of the above construction of Article V, Section 5, would necessarily mean that these State Delegates did not take office at the beginning of the 1938 meeting.

To deal with this situation, the committee recommended a clarifying amendment to Article V, Section 5, as follows:

"Strike out the sentence reading:

'The term of each State Delegate shall begin with the beginning of the annual meeting next following his election and shall end at the beginning of the third annual meeting thereafter.'

and insert, in lieu thereof, the following:

'The term of the State Delegates elected in 1938 for one year, two years and three years, respectively, shall begin with the adjournment of the 1938 annual meeting and shall end with the adjournment of the annual meetings in 1939, 1940, and 1941, respectively. The term of each State Delegate elected after 1938 shall begin with the adjournment of the annual meeting following his election and shall end with the adjournment of the third annual meeting thereafter."

A motion to adopt the amendment carried without debate.

State Delegate for Puerto Rico

The next item for consideration was the proposed amendments respecting representation of Puerto Rico. Mr. Crump stated that there had been referred to his committee a request from the Bench and Bar of Puerto Rico for recognition in the House of Delegates similar to that accorded to the Territory of Hawaii, and that an investigation had satisfied the Committee of the justice of the request. Accordingly, it approved a number of proposed amendments to the Constitution, which had the effect of giving the Territory of Puerto Rico, having a Bar of more than 540, more than 70 of whom are members of the American Bar Association, a State Delegate of its own, instead of retaining it in the territorial group with Alaska, the Canal Zone and the Philippine Islands which, collectively, will remain entitled to one State Delegate.

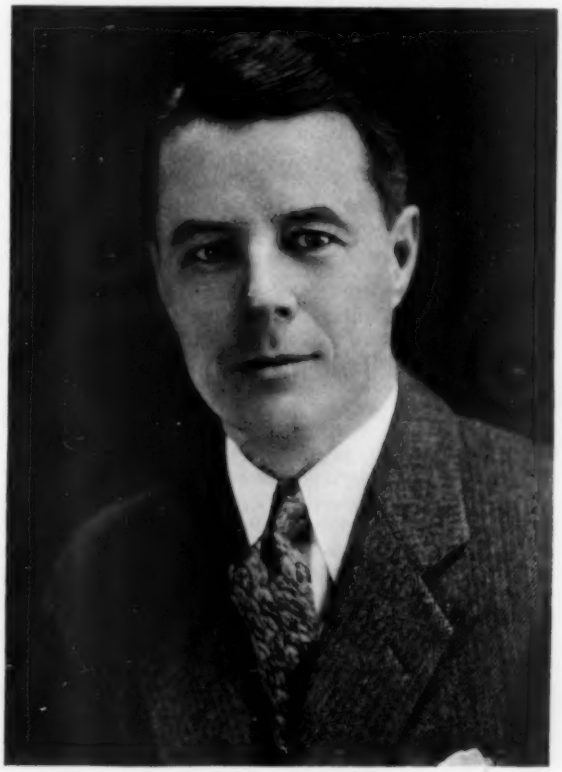
Mr. Crump added parenthetically that the difficulty of taking a ballot in the Philippine Islands and in Puerto Rico on the same candidate practically precludes Puerto Rico from any participation in the House of Delegates. The amendments were adopted.

Committees on Membership and Admissions

Mr. Crump then took up the proposed amendments of the By-Laws respecting the membership committee. He stated that the committee had taken note of the fact that under the provisions of Article I, Section 1, of the By-laws, the State Membership Committee performed the dual function of soliciting applications, as well as passing upon the eligibility of applicants for membership. In the belief that these functions should be separated by the creation of a general committee for the solicitation of members, at the same time leaving action upon applications to the State Committee on Admissions, the committee recommended the adoption of amendments to effectuate this result. These were adopted without discussion.

Proposed Changes in Nomination of Officers

This concluded the amendments which the committee recommended for adoption, Mr. Crump stated, so the report next considered other amendments which had been proposed but which the committee did not approve. The first of these were the amendments proposed by Mr. Harry P. Lawther, of Texas, to Sections 1 and 2 of Article VIII



WILLIAM W. EVANS
Assembly Delegate in House of Delegates

of the Constitution. These amendments (set forth at page 275 of the Advance Program) would provide that "Nominations for each of the offices of President, Chairman of the House of Delegates, Secretary and Treasurer and for the members of the Board of Governors to be elected in that year shall be made from the floor at the annual meeting of the House of Delegates at which said officers are to be elected."

Mr. Crump said that at the invitation of the committee, Mr. Lawther had appeared before it and presented his views in advocacy of his proposed amendments, which are designed to do away with nominations in advance of the Annual Meeting. The committee, however, after having given careful consideration to the proposed amendments, recommended that they be not adopted for the following reasons:

"(a) That all political activity should be dissociated from the annual meeting, which should be dedicated solely to constructive work;

"(b) That careful consideration of candidates, well in advance of their election, by the State Delegates, as a relatively small body, which has been selected directly and solely by the members of the Association, is a more fair and efficient method than would be their nomination at the annual meeting, without previous notice or consideration, and immediately before their election;

"(c) That the effect of the Lawther amendments would be to deprive the membership generally, of the right to nominate by petition;

"(d) That the effect of the Lawther amendments would be to deprive the small states of the influence which they now exert, and might make it possible for less than one-fourth of the states to control the selection of the officers of the Association."

After motion and second to approve the committee's recommendation and not to adopt the proposed amendments Mr. Lawther was given unanimous consent to appear before the House and speak to the motion. He was applauded as he came to the platform.

"Lawther Amendments" Defeated

Mr. Lawther reviewed the method of nomination of officers by the old General Council and the dissatisfaction that this had caused. He referred to the new organization of the Association as traceable in part to this dissatisfaction. He then asserted that the present method of nomination had not improved upon the old General Council method, because the members of the House could not question or add to the selections of the State Delegates.

He characterized the members of the House in this situation as a "bunch of yes-men" who had to sit "dumb as knots on a log" when nominations were presented. Mr. Lawther referred to the provision for nomination by petition as "a mere gesture." The thirty-day period for filing effectively precludes the working up of a list of names, especially since representatives from more than one state must be secured. The plan, he added, "is not practical. It cannot be put in operation. But if it could be, if it were practical and could be put in operation, what chance do you think the nominee of these two hundred members would have of election in this House in opposition to the nominee of the State Delegates?" One-third of the House are committed to one candidate and the others will not vote against their brothers.

Mr. Lawther thought it particularly bad that the members of the House did not even have the power to nominate their own presiding officer. Turning to the matter of expense, he asserted that the meeting of the State Delegates for the purpose of making the nominations was a needless expense which he did not want to see the Association incur. He closed with an appeal for the adoption of his proposed amendments as being for the best interests of the Association.

Mr. Stanley, of Kansas, then arose to speak against the Lawther amendments. He asserted that the matter went back to fundamentals, and referred to the controversy over the matter of representation in the House of Delegates of non-members of the Association and to the fact that the State Delegates are the members of the House of Delegates that are selected by the American Bar Association membership. Hence the matter of nomination to office is kept under the control of the membership of the Association.

There being no further discussion, the question was put as to the approval of the committee's recommendation adverse to the Lawther amendments and the committee's stand was upheld.

Nomination Solely by Petition Rejected

Mr. Crump next took up the amendments proposed by Mr. George B. Harris of Ohio, to Article VIII of the Constitution (set forth at page 276 of Advance Program). These amendments would have the effect of making all nominations for officers by petitions. The committee stated that it was opposed to the amendments and gave a number of reasons.

Mr. Harris came to the platform to discuss the matter. He stated that he had been active in the work of the Association for a great many years, serving on the General Council and various committees. He asserted that the old General Council usually nominated people who had been of service, who had completed their terms generally as members of the Council, and that the idea and practice prevailed of advancing to the higher offices those who "had served with us and whom we knew."

He then pointed out that since the Constitution was adopted in 1936 the State Delegates have nominated thirteen men for membership on the Board of Governors and of those thirteen, twelve were sitting members at the time they were nominated. He added: "Now, I venture to say that is not sound policy for the American Bar Association. I know it has been criticized a good deal by members of the Association who are not active in its politics. I have been more or less active in its politics for a dozen years or more, and I know something about what goes on in the political affairs of the organization. I had the impression, as I think many of us have had, that a nominating committee ought as a matter of fact to eschew the opportunity to nominate itself to office, but ought to nominate others, and the origin of my amendment which I filed some weeks ago rested in the belief that the practice had become so fixed with the State Delegates that they were going to nominate nobody but themselves to office, that perhaps the only thing the Association could do to stop it

would be to throw the nomination into the hands of the members of the Bar Association."

Mr. Harris concluded by saying that after having conferred with the committee whose report was then before the House he was convinced that something was going to be worked out with regard to the nomination of officers and that consequently he did not urge the passage of his amendments at the present time.

Nomination Problems Referred to Committee for Study

Mr. Clarence E. Martin of West Virginia at this point gave it as his opinion that considerable dissatisfaction with relation to Article VIII of the Constitution exists but that the suggestions made by Mr. Lawther and Mr. Harris did not meet the situation. He was particularly dissatisfied with the requirement that every member of the Board of Governors must be a member of the House of Delegates at the time he is elected. He moved as a substitute motion that Article VIII of the Constitution be referred to a committee of the House to study and report back with reference to amendments. Mr. Robert Stone of Kansas expressed similar sentiments in seconding Mr. Martin's motion.

Mr. Crump raised the point that Mr. Martin's motion was not properly a substitute for a motion to adopt or not adopt a constitutional amendment. Mr. J. Weston Allen of Massachusetts agreed with Mr. Crump, but added that he would like to see such a special committee appointed to consider the questions raised by the amendments offered at that day's session.

DONALD B. HATMAKER
Assembly Delegate in House of Delegates

Amendment Is Put to Vote and Defeated

The Chair then ruled Mr. Martin's motion out of order and called for a vote on the committee's recommendation that Mr. Harris' amendment be not approved. The recommendation was adopted.

Mr. Martin then renewed his motion amended so as to direct the Committee on Rules and Calendar to make the proper study and report back to the House with reference to the amendment of Article VIII. The motion was carried.

The next matter taken up involved proposed amendments to the By-laws creating a Standing Committee on Legal Publications and Law Reporting. Mr. Crump stated that his committee believed that the proposed amendments should not be adopted at this meeting because there was no likelihood that the work of the Special Committee to Study and Report upon the Duplication of Legal Publications would be interrupted by discontinuance, and that there were advantages in flexibility in keeping the committee as a special committee until further experience demonstrated the advisability of changing its status. Adoption of the committee's report with respect to the proposed amendment was moved and carried.

Committees on Section Recommendations Named

Mr. Crump next stated that his committee had prepared, to offer for adoption, a resolution amending paragraph one of Rule X of the Rules of Procedure of the House of Delegates, so as to provide for a Committee of the House on Section Recommendations, to consist of nine members. The committee's duty would be to consider reports of the Sections of the Association, together with the recommendations, to provide opportunity for hearing before the committee of Section Chairmen or their representatives, and to report the recommendations of the committee to the House. He added, however, that after thorough consideration the committee had reached the conclusion that further study should be given this proposed amendment and therefore recommended that no action be taken at this meeting. He noted, also, that the chairman of the House had appointed special committees to serve for the time being the purpose for which the amendment was proposed. Approval was given this action of the committee.

Chairman Morris then stated that in connection with the special committees referred to by Mr. Crump and by himself in his opening statement, the following special committee had been appointed to deal with the section reports:

(1) To consider and report upon the recommendations of the Sections of Real Property, Probate and Trust Law, Public Utility Law and Bar Organization Activities: Walter P. Armstrong of Tennessee, Chairman; Walter C. Woodward of Texas, and Hayes McKinney of Illinois.

(2) To consider and report upon the recommendations of the Sections on Judicial Administration, Junior Bar Conference and Criminal Law: Julius C. Smith of North Carolina, Chairman; Arthur G. Powell of Georgia; Douglas Arant of Alabama; and James R. Morford of Delaware.

(3) To consider and report upon the recommendations of the Sections on Legal Education and

Admission to the Bar, International and Comparative Law and Insurance Law: Oscar C. Hull of Michigan, Chairman; Joseph F. O'Connell of Massachusetts; Bert M. Kent of Ohio; Harvey M. Johnsen of Nebraska.

(4) To consider and report upon the recommendations of the Sections of Patent, Trade Mark and Copyright Law, Municipal Law, and Mineral Law: J. Weston Allen of Massachusetts, Chairman; Stuart B. Campbell of Virginia; Forrest C. Donnell of Missouri; and Roy E. Willy of South Dakota.

Hearings Before Committee on Draft

Turning again to the report of Mr. Crump's committee, the matter next taken up concerned hearings for members of the House before the Committee on Draft. Mr. L. Ward Bannister of Colorado had proposed an amendment to Rule X of the Rules of Procedure of the House so as to make it mandatory that such hearings be accorded when the resolution referred to the Committee on Draft originates in the House. It was the recommendation of the Committee on Rules and Calendar that the proposed amendment be not adopted for the reason that the hearings provided for therein can be had under the present rules and that, therefore, the amendment was unnecessary.

Mr. Bannister disagreed with the statement of the committee asserting that a hearing may be had at present only if the committee chooses to grant a hearing, and, if it does not, the hearing may not be had. He stated that there was provision for a mandatory hearing before the Committee on Hearings for proponents of resolutions arising outside the House of Delegates, but that such situation did not exist as to members of the House itself with reference to resolutions arising within the House and referred to the Committee on Draft.

Mr. Bannister said that his experience with the Committee on Draft at the last meeting was not of the kind which the Chairman of the Committee on Rules depicted. His resolution had been referred to the Committee on Draft, and there was no hearing which he could procure.

HON. JAMES C. LOGUE
President Cleveland Bar Association.

Chairman of Committee on Draft Replies

Mr. Carl V. Essery of Michigan in reply said that the Committee on Draft would have no objection to the adoption of the proposed amendment because it is the procedure that the committee would follow in any event. He referred to the resolution presented to his Committee at Kansas City by Mr. Bannister, the subject of which was contained in the proposed federal legislation which would establish regional authorities similar to the T. V. A. The purpose of the resolution Mr. Essery said, was to commit the American Bar Association to opposing these bills. The members of his committee felt that the resolution would precipitate the House in a political debate and he had gone under the direction of the committee, as Chairman, to the sponsor of the resolution and asked him to withdraw it. Mr. Bannister had come to him the next day, Mr. Essery said, and had stated that he would withdraw "because there is no use in going ahead if you are against me anyway." Mr. Essery then concluded:

"The point is, he was asked to withdraw the resolution. He did withdraw the resolution and if he had not withdrawn it, gentlemen of the House, he would have had a hearing because that is the policy of the Committee on Draft."

Approval of the report of the Committee on Rules and Calendar relating to the question followed.

Holding of Mid-Winter Meeting Approved

The next matter presented by Mr. Crump's committee involved the holding of a mid-winter meeting of the House of Delegates in Chicago in January, 1939. The committee so recommended and included a resolution directing that the State Delegates, the Board of Governors, and all Section Councils and Committees which can do so, hold their interim meetings in conjunction with this mid-winter meeting. The resolution also declared that all members of the House, not otherwise entitled to reimbursement from some other Association source (e. g. because of a concurrent meeting), be reimbursed for any actual expenses necessarily incurred for railroad and Pullman fare for attendance at such mid-winter meeting.

Mr. John M. Slaton, of Georgia, suggested that it might be more appropriate to have the meeting at the same time as that of the American Law Institute in May.

Mr. Crump explained that the only mid-winter meeting of the House of Delegates which had been held was the one held at Columbus, the meeting

at Washington being a meeting of State Delegates and that there were objections to holding a meeting of the State Delegates as late as the May meeting of the American Law Institute. He pointed out that there seems to be merit in the suggestion that an insufficient period of time is allowed after nominations in May within which to permit the circulation of petitions for nomination, should anybody desire to do so. Furthermore, the Association meets next year earlier even than this year, and there would not be sufficient time for the preparation of reports if those committees which usually hold their interim meetings in May in Washington, in connection with the American Law Institute, defer their meetings next year until that time; and the Board of Governors would have insufficient time in which to examine the reports.

A member asked what was the purpose of the mid-winter meeting and Judge Ransom was called on to reply.

Purpose of Interim Meeting Explained

Judge Ransom declared that "there is an undetermined question before the American Bar Association, and we have seen evidence of that here today, and that is whether the policy-determining body of this Association, in behalf of the legal profession, is the House of Delegates or is to be some rehabilitation of the old Executive Committee idea. From what I have seen during the past two years of the functioning in fact of this House, I think the policies of the Association are better determined by it than they could possibly be by the Board of Governors in whatever manner it is nominated and elected.

"I think from the reports that are before this meeting, the recommendations and the other reports that are to come before us, there will be plenty of constructive work on which the action of the House will be needed at a mid-winter session. Personally, I think from experience that we do not get adequate consideration of American Bar Association matters in Washington during the week of the American Law Institute, so I, for one, conceive that the most important action which will be taken, I hope, by the House in Cleveland this week will be the setting of a definite precedent for an annual mid-winter meeting of this House of Delegates."

A motion to adopt this part of the committee's report was adopted and the matter referred to the Committee on Draft to draw up a resolution in definite form.

Report of Board of Governors

The next order of business was the report of the Board of Governors presented by Secretary Harry S. Knight. He reported that regular distribution had been made of the records of the proceedings of the several meetings of the Board of Governors. The Board's recommendation that the amendment of Article II of the By-laws of the Section of Mineral Law, providing for the payment of Section dues of $2.00 per member per annum, which was adopted by said Section at its Kansas City meeting, be approved was adopted by the House *nunc pro tunc*.

The Board's recommendation that the amendments to Articles III, IV, and IX of the By-laws of the Section of Municipal Law, providing for the personnel of the Section Council, for amending the Section By-laws, and for notice of a special meeting of the Section, which amendments were adopted by said Section at its Kansas City meeting, be adopted, was likewise approved by the House *nunc pro tunc*.

Secretary Knight also referred to the Board of Governors' recommendation concerning the appointment of a Committee of the House to be known as the Committee on Section Recommendations, and noted that the matter had been referred back to the Committee on Rules and Calendar for further study.

Section of Commercial Law Authorized

The Board of Governors, he continued, had been studying the advisability of creating a Section of Commercial Law and had concluded that it would be for the best interests of the Association so to do, and that, if created, certain now existing committees could be merged into such section. He moved the adoption of a resolution embodying this suggested change. At this point Judge Ransom suggested that such an important matter should not be taken up at a late hour, when a large number of the delegates were not present. He asked that the creation of the Commercial Law Section be made a special order of business for the Wednesday or Thursday meeting.

Mr. Sidney Teiser, of Oregon, disagreed with Judge Ransom stating that he understood that there was need for speedy action with regard to the section and if held over it would mean that it would be too late to organize it at the Cleveland meeting as had been planned.

Judge Ransom replied that he could not imagine any emergency and such a motion involving the abolition of a number of existing committees that have functioned well over the years and the creation of a new section ought to be considered when it could be discussed with a full house present and ought also to be considered in the light of the financial situation of the Association.

Mr. Jacob V. Lashly, of Missouri, then came to the platform and urged that there was not any real reason why this particular recommendation of the Board of Governors should be deferred for consideration. The expanding activities of reorganization, bankruptcy and kindred subjects had impressed the Board, he said, and the need of a section appeared to be pretty generally conceded and held by the commercial law men and men throughout the country who are engaged considerably in those fields of practice. The section is expected to be self-sustaining, or if not entirely self-sustaining, would not create any expense in excess of the budget arrangement heretofore made by the standing committee handling the subjects which will be included in it. There was much to be gained by authorizing the immediate creation of the section, as otherwise a whole year might be lost.

Question as to Activities of Proposed Section

After a question from Sylvester Smith, of New Jersey, as to the fundamental nature of the changes involved, Mr. Lashly replied that the activities which the section would assume, if authorized, were to be considered by the organization committee of such a section. It was not at once apparent that any committee will be displaced from the work it

was doing with the sole exception of the Committee on Commercial Law and Bankruptcy. In any event, the By-laws of the Section would come back to the Board of Governors and the House for approval.

Judge Ransom raised a further question with reference to expense, which Mr. Lashly replied to by giving the tentative plans for section dues. He further urged the great need in the Association for a forum in which commercial lawyers might express themselves and in which they could discuss their multiplied and complex problems.

Judge Ransom pointed out that matters with which this section was to deal were all legislative. He asserted that the whole history and experience of the Association were against turning legislative matters over to sections—that they are always dealt with better by committees. He asked again for consideration at a time when more members were present. "I think that if we are going to change our fundamental policy and turn legislative matters over to more or less autonomous sections, it ought to be done when the full House is here and upon a full consideration."

After call for the question Mr. Lashly moved that approval of the report of the Board of Governors as to the creation of a Section on Commercial Law be substituted for Judge Ransom's motion to make the matter a special order of business later in the week. This substitute motion was seconded and carried, after which the House adjourned at 5:20 P. M.

Second Session of House of Delegates — Subject for Ross Essay Contest 1939 Announced —Recommendations of Section of Judicial Administration for Numerous Judicial Reforms Are Approved—Program to Be Pushed — Reports of Committees

SESSION opens with announcement that the Board of Governors has selected this subject for the Ross Essay Contest for 1939: "To What Extent Should Decisions of Administrative Bodies Be Reviewable by the Courts?" The subject emphasizes the policy of having contestants investigate and report on matters of immediate legal interest and importance. Reports of various committees are made and considered and their recommendations acted on. Chairman Parker of the Section of Judicial Administration reports its recommendations for numerous judicial reforms and answers questions from the floor. The House votes approval of these recommendations, and thus launches the Association on a great and constructive program. Chairman Parker emphasizes the fact that the aid of local and State Bar Associations will be necessary for the success of the movement for judicial reform. House votes approval of principles of judicial selection set out in report of Committee on Judicial Selection and Tenure.

THE second session of the House of Delegates convened at two-ten o'clock on Wednesday, July 27, Chairman Morris presiding. After roll-call and approval of the record of the previous day's session, unfinished business was called for.

The next order of business was the offering of resolutions for reference to the Committee on Draft. Chairman Morris announced that Judge A. B. Lovett of Georgia had said that if the House had not voted to hold its mid-winter meeting in Chicago, the Bar of Savannah, Georgia, would have extended an invitation to the House to meet in that city.

Resolution Condemning Jersey City Police Offered

It was announced that a resolution had been received from Mr. Charles H. Strong, Secretary and Delegate of the Association of the Bar of the City of New York, which was a copy of a resolution adopted by that Association on May 10, 1938. It was read and referred to the Committee on Draft for report at a later session. The resolution in its preamble referred to the reports that citizens had been threatened with violence by armed mobs and had been deported from the State of New Jersey by the exercise of physical force by the police of Jersey City, and that such acts of the police had been permitted pursuant to the direction or with the approval of their superior authorities without any complaint to a magistrate or other judicial officer. The resolution declared that such acts of the police were violations of the fundamental right of free speech and deprived citizens of their liberty without due process of law, and therefore should be condemned.

Report of Committee on Admiralty and Maritime Law

The next order of business was the report of the Committee on Admiralty and Maritime Law, of which Mr. Farnum of Massachusetts was chairman. In the absence of the chairman it was moved that the privilege of the floor be extended to Mr. Cody Fowler, of Tampa, Florida, a member of the committee, but a non-member of the House.

In referring to the work of the committee, Mr. Fowler said that three major subjects had been considered, two of which had been passed over to the next committee so far as making specific recommendation was concerned. One of these was the question of ship owner's liability, on which no action was taken because of a pending study by a committee of the American Maritime Association. The other question concerned the adoption of the Collisions Convention which was recommended in 1910 by a conference of representatives of 24 nations at Brussels. Mr. Fowler pointed out that this would

change the maritime law of the United States considerably and that there is much controversy about it; therefore further study seemed to be in order.

The one recommendation of the committee concerned what are referred to as "amphibian torts." The committee asked the Association to reaffirm its approval of proposed federal legislation extending the admiralty and maritime jurisdiction of the United States to all cases of damages or injuries to persons or property on land done by a vessel in navigable waters. Mr. Fowler explained that the varying relief given in admiralty as compared with the common law results in some very unusual situations. For example, he said, if a ship and a bridge came into collision as a result of mutual fault, at the present time the owner of the ship, under the admiralty damage, could get one-half of the damage, while the owner of the bridge or dock, if suit were brought at common law, would have a complete defense to its action on the ground of contributory negligence.

The House approved the committee's recommendation without further discussion.

Report of Committee on Aeronautical Law

The next matter was the report of the Aeronautical Law Committee, of which Mr. William A. Schnader of Pennsylvania was chairman. Mr. Schnader stated that during the past year the committee has been cooperating with the Conference of Commissioners on Uniform State Laws in the final stages of the preparation of a uniform aeronautical code, but it had no recommendation to make with respect to that work at the present time. The only recommendation of the committee had to do with the question of salvage of aircraft in navigable waters of the United States . He observed that a number of decisions abroad hold that a seaplane is not a ship and that, therefore, the maritime law of salvage is not applicable where aircraft or aircraft cargo is salvaged. England, France, the Irish Free State had passed statutes on this subject, he said, and it seemed desirable that the Congress of the United States do likewise. The committee's recommendation was that the Association endorse the principle that the salvage of aircraft lost in navigable waters subject to the jurisdiction of the United States should be regulated by the principles of maritime law, and that it authorize the standing Committee on Aeronautical Law to cooperate with the Maritime Law Association of the United States and with the Committee on Admiralty and Maritime Law in preparing a bill for introduction in Congress to effectuate that principle. This represented an amendment to the recommendation as it appeared at page 57 of the Advance Program in so far as cooperation with the Committee on Admiralty and Maritime Law was concerned.

Without further discussion the House approved the recommendation. Secretary Knight then stated that one recommendation of the Board of Governors with reference to this committee's report had been carried out in the amendment. The other recommendation of the Board was that the final draft of any bill was to have the approval of the House of Delegates or the Board of Governors before it should be considered as having been authorized or approved by the American Bar Association.

BERT M. KENT
Assembly Delegate in House of Delegates

American Citizenship Committee Reports

The next order was the report of the Committee on American Citizenship, which contained no recommendation. Mr. Ralph R. Quillian of Georgia, chairman of the committee, stated, however, he would like to make a few remarks supplementary to the printed report. He referred to this report as showing in considerable detail the activities in which the committee engaged during the past year. Its activity was centered, he said, in the launching of a nationwide speaking campaign designed to enlighten citizens concerning the rights and privileges which they enjoy under the American form of government.

He laid special emphasis on the nationwide radio program which was broadcast under the auspices of the Committee and the Junior Bar Conference from New York and Exeter, New Hampshire, on June 21, that occasion marking the ratification of the Constitution of the United States by the State of New Hampshire. The program was characterized as a dramatic and effective portrayal of the historic scenes of the Constitutional Convention and the vote of ratification in the various states. President Vanderbilt made an address in connection with the program. In conclusion Mr. Quillian called attention to the fact that more than 1200 addresses of a basically patriotic character had been made under the auspices of the committee and the organization set up in the Junior Bar Conference to cooperate with it.

Chairman Morris next announced that the Committee on Communications had no recommenda-

tions to make, and that the report of the Committee on State Legislation would be passed at that time. The original report of this committee was received and filed, since it contained no recommendations. Report of the Committee on Amendments and Legislation relating to Child Labor was received for information. Secretary Knight transmitted the recommendation of the Board of Governors that the committee be continued. This recommendation was approved by the House.

In connection with the report of the Committee on Judicial Salaries, Mr. Walter S. Foster, of Michigan, addressed the House for a few moments. The committee was really created, he said, to deal with the matter of federal salaries, but during the last few years all the study had been related to state salaries. The American Bar Association, of course, cannot send word out to a particular state saying what judicial salaries in that state should be, but, he added, "the Association may spread some propaganda very gently and some information and render general assistance."

The work of his committee is very vitally related, Mr. Foster stated, to the quality of the judiciary, but it can only hope to accomplish good results indirectly. The question of pensions for judges would probably be an important matter for study by the next committee, he concluded. The committee was continued.

Committee on Judicial Selection Reports

The next item of business was the report of the Committee on Judicial Selection and Tenure, of which John Perry Wood of California is chairman. This report appeared on page 144 of the reports of the Section of Judicial Administration.

Judge Wood reviewed the work of his committee for the year, stating that it had looked to see what previous committees had recommended, had examined whatever might be found in print upon the subject, had corresponded with the State Delegates and with numerous other lawyers in the several states to ascertain the situation as to the method of judicial selection obtaining in all the states and how these methods were working.

The committee then, Judge Wood said, had advanced certain principles as representing the best thought of the Bar on the subject; and these principles were:

First, judicial personnel is of supreme importance among the problems of the legal profession. Reform in respect of adjective or substantive law may go for very little if, when those laws must be applied, the members of the Bar must go before unqualified judges.

Second, with the exception of some of the less populous communities, direct election of judges operates to destroy judicial independence and in consequence the bench is steadily retrograding, especially in metropolitan areas.

Third, if administration of justice in the states where the judges are elected is to be made what it ought to be, and if the respect of the people for their courts is to be restored, an acceptable substitute for direct election must be found and applied.

Fourth, to accomplish this, the sustained effort of the American Bar Association is necessary to the end that the electorate and the Bar itself may be informed and that a remedy may be applied.

Judge Wood noted that in some eighteen states, dissatisfaction with the administration of the courts was so widespread that definite proposals had been formulated, looking to a substitute or another method of judicial selection. In every instance but one appointment by dual selection is the method being advocated; that is, appointment by the executive from nominations made by a properly constituted board, itself responsible to the electorate. Periodical non-competitive elections whereat the appointee, after a period of service, and the incumbent judges, upon the expiration of their respective terms, go before the people without a competing candidate are frequently included in the proposals.

A plan containing these elements was thought by the Committee to bring together the best elements of the Federal and of the elective system, and in the main eliminate the weaknesses of each; that is, the appointment is circumscribed and the way is provided to remove a judge who demonstrates unfitness.

Central Agency to Forward Judicial Selection Approved

Judge Wood then urged, as a recommendation of the committee, the creation by the American Bar Association of an effective central agency, operating continuously and, so far as possible, with continued and competent personnel; the employment or assignment of a director to forward that branch of the national bar program which has to do with better methods of selecting judges. The continuance of the committee to cooperate with such agency was also recommended.

He pointed out that the help of the Association was urgently needed in those states where campaigns were under way, and stated that no voluntary committee of scattered and changing membership could do the work required.

Judge Wood was of the opinion that the part time of one effective man should be secured. He did not urge the House to make an appropriation nor attempt to determine the form or extent of any agency that might be set up, but did ask that it approve the recommendation of the Committee on Judicial Selection and Tenure and refer it to the President and the Board of Governors, to determine the feasibility of the proposal made therein, financially and otherwise, and to take such action thereon as in their judgment might be appropriate. It was also recommended that the committee be continued.

Chairman Morris noted that the recommendation of the committee differed from that submitted in the advance report by the addition of the words referring the matter to the President and Board of Governors with power to act. Secretary Knight stated that the Board of Governors had recommended deferring action on the matter until a new Board took office.

On call for discussion of the motion embodying the committee's recommendation, Mr. Charles A. Cantwell of Nevada moved an amendment to the resolution, so as to strike out the word "approved," making it merely a reference to the Board of Governors with power to act, without any approval by the House of the recommendation. A vote on this substitute motion was taken and a division was called for.

At this point Judge Wood was given permission to speak with reference to the amendment.

He submitted that the cause for which this committee had labored was entitled to an expression of opinion by the House, and that a stage of development had been reached where the delegates knew whether or not they approve, in general, of the substitution for direct election in the elective states, and whether or not the American Bar Association should do what it properly may to forward the efforts to provide such substitutes.

On a rising vote the substitute amendment was declared lost. The House then approved the committee's recommendation in the amended form and ordered it continued.

The next matter was the report of the Committee on Bar Journal Advertising, presented by Mr. Fred B. H. Spellman of Oklahoma. He spoke briefly of the investigation that was being made of the feasibility of securing joint advertising for the several bar association journals, pointing out that the matter had been worked out very nicely by the medical journals. The committee had not finished its work and had no recommendations to make except that it be continued. The House approved this recommendation.

Statement As to Association Finances

It was announced that the information as to Association finances suggested at the first session of the House of Delegates was available. Treasurer Voorhees stated that the Audit Report of the Treasurer had been considered by the Budget Committee and that he felt that that committee was the proper authority to present its comments and analysis of the audit with respect to these matters.

Mr. Joseph W. Henderson of Pennsylvania then came to the platform as the representative of the Budget Committee of the Board of Governors. He announced that the total cash receipts for the fiscal year ending June 30, 1938, were $356,024.36, including two non-recurring items, voluntary contributions of $75,830.57, the last payment on the Carnegie grant, in support of coordination, in the sum of $5,930.76, or a total of non-recurring items of income during this year of $81,760.93. The total expenditures were $345,409.68, including one item non-recurring for the current year on account of activities on the proposals as to the Supreme Court, of $18,283.41; however, included therein as a carry-over from last year was an item of accounts payable of $23,702.76, notes payable of $15,000, or a total of those two items of $38,702.76, which is a non-recurring item in connection with the Supreme Court Committee, or a total of $56,986.17 of non-recurring expenses.

The difference between the cash receipts and the total expenditures for the year ended June 30, 1938, is $10,614.68, but unpaid bills amount to some $5,000, so that there remains approximately $5,600. Mr. Henderson observed that sustaining memberships had not been considered as a non-recurring item, but as a current item of income necessary in connection with the operations of the Association in the future.

Supplemental Report of Committee on State Legislation

Mr. John R. Snively of Illinois, the Chairman of the Committee on State Legislation, presented a supplementary report at this time. It contained three recommendations. The first asked the Association to reaffirm its belief in the necessity of uniform legislation and to urge the passage thereof by the legislatures. The second one invited all members of the Association to assist in securing the passage of uniform legislation and the third recommended the appointment of a committee on State Legislation by each state bar association to cooperate with the committee of the Association. The first two recommendations were adopted without discussion. Mr. McCoy of Kentucky suggested that the third recommendation required some sort of follow-up to be of any effect and asked what was contemplated along this line. Mr. Snively replied that several committees of the type suggested in the resolution were already in existence and had been of considerable assistance in many respects. He was sure that the committee would follow up the matter of the appointment of committees in the several states if the recommendation was approved. With a scattering of "noes" the third recommendation was approved.

The next report was that of the Committee on Commercial Law and Bankruptcy, which contained no recommendations. Mr. Henry C. Shull of Iowa, the Chairman of the committee, supplemented the report with a few remarks concerning the new Chandler Bill, recently passed by Congress and approved by the President. He stated that this new bill is very comprehensive and far-reaching, and constitutes a rewriting of the entire bankruptcy law of the United States as it was enacted in 1898, and has since been amended and therefore merited being studied very carefully.

Committee on Federal Taxation Reports

The next order of business was the report of the Committee on Federal Taxation by Mr. Robert N. Miller of the District of Columbia, Chairman. The report of the committee contained nine recommendations (set out in the Advance Program beginning at page 89), which were taken up by Mr. Miller in order.

The first of the nine recommendations was that the Committee on Federal Taxation be directed to study and report upon methods of correcting the procedural difficulties which arise when more than one state attempts to levy death taxes upon the estate of a single decedent, each claiming that he was domiciled in that state. Mr. Miller explained that the recommendation was necessary because it was a little "off the beat" of a Committee on Federal Taxation. The recommendation was approved by the House without discussion.

Mr. Miller then observed that the next four recommendations formed a group of truisms formulated as a result of the committee's experience over the last eight or ten years. He felt that the public adoption of these four recommendations by the Association would go a long way towards securing sound public opinion on these matters, and that it was therefore an opportunity for the Association to do useful and constructive work.

The first of this group of four (the second committee recommendation) directed the Committee on Federal Taxation to do what it could toward emphasizing the importance of career men in the tax collection and tax determination phases of the revenue function. Mr. Miller explained that the reso-

lution distinguished between men in the phases named and those who controlled legislative policies, since these have to be in the hands of those politically selected. The recommendation was approved without discussion.

The next recommendation stated that it was important to avoid drying up sources of revenue by indulging in three sorts of practices; namely, the enactment of provisions which cause taxpayers to entertain grievances, of provisions which are difficult to understand, and of provisions which tend to diminish the income of taxpayers for future years. Mr. Miller added that the authorities do not differ on matters of this sort, and that the officials of the Treasury Department no less than the members of the committee knew the importance of these principles, but the vital need was for the general public to recognize them as well. The recommendation was approved without debate.

Maintenance of Tax Compliance Urged

Mr. Miller then read the fourth recommendation providing that the Committee on Federal Taxation be directed to advise with the responsible authorities with a view to developing ways by which (a) the existing habit of tax compliance among citizens may be maintained and strengthened. (Mr. Miller added parenthetically that the committee's report showed that the existing habit of tax compliance is one of the government's greatest assets, to be carefully preserved and worth preserving); (b) ways by which the position of the Treasury as a reliable authority on law construction may be maintained and strengthened; (c) the use of compromise and of give-and-take negotiations in controversies of fact and of law may be promoted; (d) after an administrative hearing, the result and the decision shall be made by the officials who have been present at the hearing; and (e) assurance may be had that authorities charged with reviewing Treasury fact decisions shall be under a clear duty of making or directing a redetermination whenever the preponderance of the evidence appears to be against the Treasury's conclusion.

The recommendation was adopted without comment, as was the next one, which directed the committee to cooperate with authorities in searching for ways of eliminating obscurity from existing income tax law and of avoiding inclusion of obscure provisions in the future.

The next recommendation was a technical one concerning gains for tax purposes growing out of reorganizations and involved an amendment of Section 112 of the Revenue Act of 1938 dealing with such matters. Mr. Miller explained that it was felt necessary to provide specifically that the existing section, stating that no gain or loss was to be recognized when the exchanges made in connection with the reorganization were solely for stock or securities in another corporation a party to the reorganization—applied regardless of whether or not the new corporation did or did not assume the debts of the old one or ones.

The next recommendation (number seven) urged that the government refrain from taxing income from the discharge of obligations at less than face value, unless the obligation and the discharge both came within the same taxable year. Mr. Miller showed that the application of the contrary principle could result in a man being required to pay a tax when he might not receive a dollar of income from any source. The recommendation was approved.

The next resolution recommended to Congress the repeal of Section 820 of the Revenue Act of 1938, a section which in effect modifies the statute of limitations so as to reopen some cases retroactively. It was likewise recommended, however, that the Committee on Federal Taxation, while directed to urge the repeal of this statute, be also directed to confer with the Congressional and Treasury experts as to other methods of avoiding what the statute in question is aimed at, that is, the aim of trying to avoid double deductions and double inclusions of gross income items.

The recommendation was approved.

Repeal of Law Requiring Lawyers to Report Advice to Clients

The last recommendation asked reaffirmation of the stand taken last year with regard to the repeal of the provision in the tax law requiring lawyers in certain cases automatically to make returns to the Government of advice they gave to clients; that is, in connection with the organization or reorganization of any foreign corporation and the appointment of a special committee in this connection. Mr. Miller explained that the law required not merely that lawyers answer questions, but that lawyers automatically, within thirty days after they gave such advice, should make a return to the Government on a form provided by the Government. He stated that if the Tax Committee presented this, people would not believe they did not have primarily a tax motive. He concluded: "Congress didn't take our recommendation, so all we are suggesting is that this be assigned to a special committee which is not a tax committee, since the primary purposes of our recommendation really have nothing to do with taxation, but with something broader that all lawyers are interested in."

The recommendation was approved.

Committee on Securities Laws and Regulations

The next item of business was the report of the Committee on Securities Laws and Regulations, which was presented by Mr. Henry S. Drinker, Jr. of Pennsylvania, in the absence of the chairman of the committee. Supplementing the report, Mr. Drinker stated that the work of the committee had been mainly devoted to consideration of the Barkley and Lea Bills, which are still pending in Congress. He explained that the Barkley Bill would give the Securities and Exchange Commission authority to prescribe all the provisions virtually for interest indentures, not only as to matters of form, but also as to matters of substance, and that the Lea Bill would prescribe the qualifications of committees not only in connection with judicial reorganizations but in connection with voluntary readjustment by corporations of their corporate structure in the mergers and consolidations and in alteration of their charter provisions affecting stock and obligations. These bills would be brought up again next year, he said, and asked that the committee be continued for another year for the purpose of making further study of them. This recommendation was approved without further comment.

The next item was the report of the Committee on Customs Law. Mr. Albert MacC. Barnes of

The New Chairman of the House of Delegates Thomas B. Gay

New York, chairman of the committee, supplemented its printed report by stating that the attempt to insert in the Customs Administrative Act of 1938 a provision for declaratory rulings affecting imported merchandise not reviewable by any tribunal or any court either on the facts or on the law was unsuccessful. He then declared it had been previously stipulated with the Committee on Administrative Law with regard to legislation proposed by it: "That nothing contained in this Act shall apply to the conduct of port affairs or to any matter arising under the Internal Revenue, Customs or Patent laws." He asserted that the legislation proposed by the Committee on Administrative Law (appearing at page 165 of the Advance Program) violated this stipulation. Therefore he wanted the proposed legislation recommitted to the Committee on Administrative Law. Chairman Morris stated that discussion of the matter would be continued until the report of the Committee on Administrative Law was before the House, after it had been pointed out by Mr. Robert F. Maguire of Oregon that Section 6 of the proposed bill seemed to take care of Mr. Barnes' objections. The committee was continued.

Jurisprudence and Law Reform Committee Reports

The next report was that of the Committee on Jurisprudence and Law Reform, Mr. Province M. Pogue of Ohio, chairman. The committee had made twelve recommendations in its report as it appeared at page 108 of the Advance Program. Chairman Morris announced that the Board of Governors recommended the elimination of all of Recommendation One relating to the new Federal Rules except as to the continuance of the Advisory Committee, because such a resolution was no longer needed. The same recommendation was made as to the second proposed resolution.

Mr. Pogue stated that the remarks of the chairman had already been taken into consideration and changes had been made in the report with reference to certain of the resolutions. The first recommendation was simply that the Advisory Committee on Rules for Civil Procedure appointed by the Supreme Court of the United States be continued. This recommendation was adopted without discussion.

Mr. Pogue announced that the second resolution as it appeared in the Advance Program, con-

(*Continued on page 749*)

HERBERT HARLEY Awarded ASSOCIATION MEDAL for 1938

HERBERT HARLEY, Editor of the Journal of the American Judicature Society, and for many years a tireless advocate of improving judicial machinery so as to make the administration of justice more effective, was awarded the American Bar Association Medal at the Cleveland meeting. The honor was awarded at the first session of the Assembly before a large and distinguished audience in the Music Hall of the Auditorium.

In presenting the Medal, President Vanderbilt spoke briefly of the services which entitled Mr. Harley to this signal recognition from the profession. Mr. Harley received the Medal and bowed his acknowledgments, but made no formal reply. The citation, as given by President Vanderbilt, was as follows:

"Twenty-five years ago this month the American Judicature Society was chartered 'to promote the efficient administration of justice.'

"It was much needed. Exactly seven years before, Roscoe Pound, young Nebraska lawyer, had stunned the elder statesmen of this Association by his address at St. Paul on 'The Causes of Popular Dissatisfaction with the Administration of Justice.' It was denounced on the floor of the Assembly. One speaker, by way of answer, expressed the belief that our system of procedure was 'the most refined and scientific system ever devised by the wit of men.' Another orator decried the attempt—I quote his words—'to destroy that which the wisdom of the ages had built up.' The sole supporting voice in the entire Assembly was that gallant veteran, Everett P. Wheeler of New York. From its very beginning, the American Judicature Society had stony soil to till and wintry blasts to combat. It had great and influential friends—Roscoe Pound, John H. Wigmore, Albert M. Kales, Mofield Storey, Louis D. Brandeis, John B. Winslow, Frederick W. Obermann, Harry Olson, Elihu Root, William Howard Taft, Charles Evans Hughes and Newton D. Baker—but it had need of them.

"For twenty-one years its Journal has been the chief instrumentality in America for improving the administration of justice. Despite great difficulties, it has not been a voice crying in a wilderness. Its sphere of influence has constantly and consistently increased. Its purpose has been single, as each issue of its Journal proclaims, 'to promote the efficient administration of justice,' but the good causes it has promoted as aids to its goal are not only numerous but important in themselves. It has been the mainspring of the movement for a self-governing bar. It has encouraged the founding of bar journals. It has aided the organization of judicial councils. It has advocated the extension of the rule-making power. There is not a state or important local bar association that has not felt the impress of its ideas.

"Herbert Harley was the founder of the American Judicature Society, its Secretary from the beginning and its Editor. His was the original idea. He found the sponsor whose financial aid made the organization possible. He traveled all over the country making contacts with leaders of judicial reform everywhere. He has labored tirelessly to promote the ideal for which the Society was founded. An optimist, yet always a realist, shy, retiring, preferring to remain anonymous, persistent in pursuing ideas, and indulgent in excusing frailties in others, he has borne the heat and burden of the day through a quarter of a century. There is not a man who has been associated with him who would not admit that Herbert Harley was and is the American Judicature Society. If there has been a change since Dean Pound spoke at St. Paul in 1906—if today leaders among our judges, our practitioners, and our law professors can agree and have agreed on fundamental recommendations to improve the administration of justice which are to be submitted this week to the discussion of the Assembly and the House of Delegates—the credit, more than to any other man, must go to Herbert Harley.

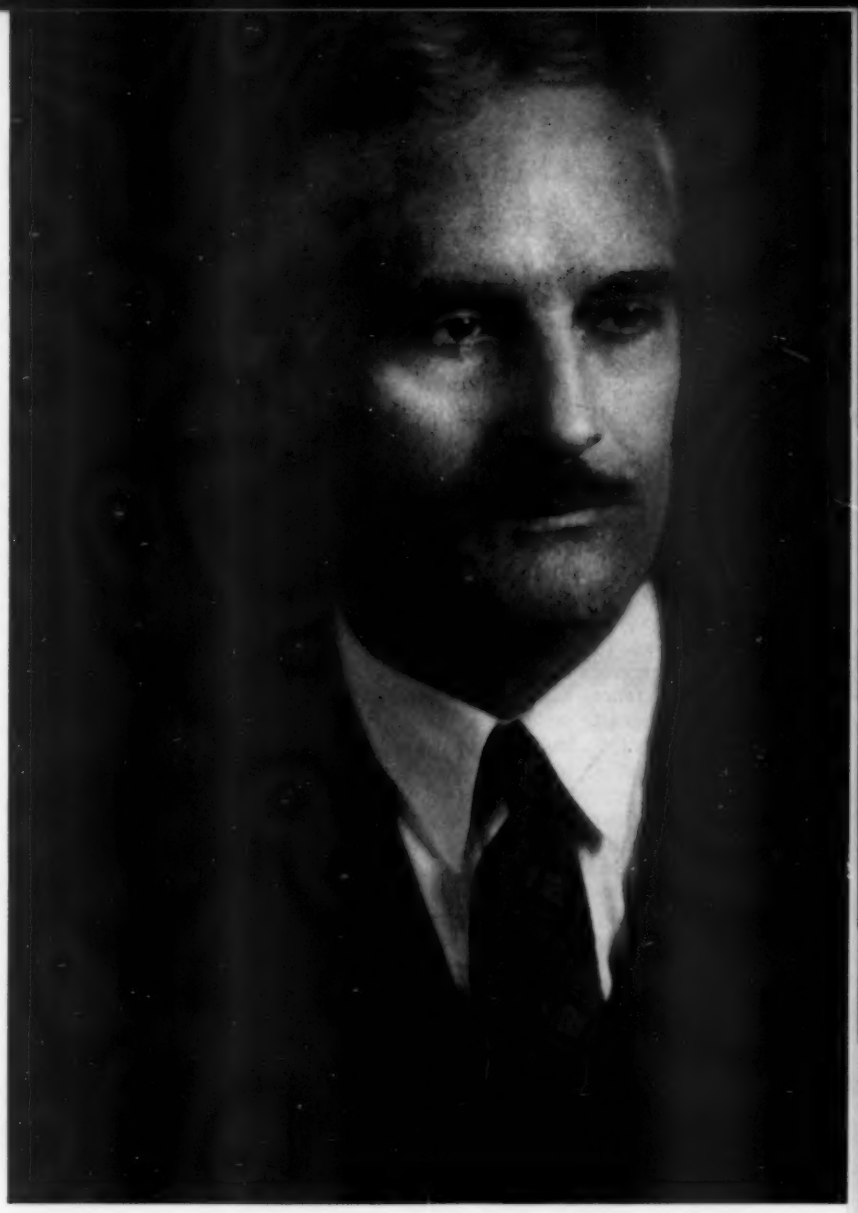
"In awarding to you the American Bar Association Medal, the profession is but publicly, albeit tardily, acknowledging an accumulating indebtedness to you that it cannot hope to repay. By this token, the greatest at its command, it seeks to evidence to the world not only its obligation to you, but its gratitude to you for having tended with singleness of purpose for a quarter of a century, in fair weather and foul, the sacred fire of the altar of justice. And may I add this personal note, that to me, as to more than one of my predecessors, your work and your friendship have been an inspiration. No official duty of the year has given me as great pleasure as to hand to you, by direction of our Board of Governors, the American Bar Association Medal."

The medal was then presented to Mr. Harley, who bowed and received it while the audience applauded.

The Semi-Centennial Meeting in Seattle in 1928 initiated the plan of presenting an American Bar Association Medal each year to an American lawyer who has rendered conspicuous service to Jurisprudence. Professor Samuel Williston of Harvard was the first recipient of the honor at the Memphis meeting in 1929. Elihu Root received the Medal at Chicago in 1930; Justice Oliver Wendell Holmes, at Atlantic City, in 1931; John H. Wigmore, at Washington, D. C., in 1932; George W. Wickersham, at Milwaukee, in 1934. It will be noted that there were several years in which the Medal was not awarded.

The following interesting details as to the Medal were given at the Memphis meeting by

Herbert Harley



Hon. J. Weston Allen on the occasion of the presentation of the Medal to Professor Samuel Williston:

"It is struck in 24-carat gold. It was designed by Mrs. Laura Gardin Fraser, who is known as one of the most eminent medalists in this country. She is one of the six medalists who have been awarded the Saltus Medal of the Numismatic Society as a medalist—and the only woman. But she is better known to you because she was the successful competitor in the national competition for the Congressional Medal to Lindbergh.

"She has devoted herself to the work of designing this medal, and I am told by the Metallic Arts Society that it is one of the most beautiful and artistic medals they have ever struck for any organization.

"On the face of the medal is the St. Memin profile of John Marshall. Over the profile are the words 'American Bar Association Medal.'

"The inscription which is in the background of the bust of Marshall was selected only after the most careful consideration by men who were asked to aid as consultants. Dean Pound of Harvard, Mr. Wickersham, Mr. Robert Grant, Judge James M. Morton, of the Federal Court of the First District, and others have given much time to the selection of the proper inscription which should appear upon the medal. . .

"We had in all nearly one hundred different quotations suggested for the medal. The choice finally fell upon the words which conclude the Bill of Rights of my own Commonwealth of Massachusetts, the words of John Adams: 'To the end it may be a government of laws and not of men.'"

THE TASK OF YOUNG MEN IN A CHANGING WORLD

Address Delivered by President Arthur T. Vanderbilt Before the Junior Bar Conference of the Association on July 24

I HAVE come here today to express my personal appreciation of service splendidly performed. We are indebted to you for your outstanding work in interesting a large number of lawyers, particularly of the younger generation, in the American Bar Association. Lately you have undertaken the special task of interesting the recent graduates of our law schools in bar organization activities. There is no more important work in the Association than that, and you are better equipped to handle this important work than any other group.

The work of the Committee on American Citizenship, manned exclusively by members of the Junior Bar Conference, has been outstanding. The nation-wide broadcast, conducted under your auspices on Ratification Day, has led not only to a demand in many quarters that it be made an annual event, but has evoked the suggestion that in each of the original thirteen states there should be a dramatization of the work of its convention to ratify the Federal Constitution.

The work of the Committee on American Citizenship has really been part and parcel of the Public Information Program conducted by the Junior Bar Conference with great success throughout the year. In these days, when there is so much misinformation being gratuitously disseminated throughout the country on matters of public concern, the importance of making available unprejudiced and enlightened information on current topics of public interest cannot be overestimated. In this work, again, the members of the Conference have facilities which cannot be equalled elsewhere.

I shall not attempt to recount all of your activities. I have simply mentioned two, the success of which stands out conspicuously. Much of your work, as indeed of all bar association work, has to deal with intangibles, the importance of which we all realize but which are very difficult to weigh and measure. Suffice it to say as to each new responsibility that has been laid on the Junior Bar Conference, there has been a quick acceptance of the task and a thoroughly commendable fulfillment of it. It is not without significance that each succeeding president, since the organization of the Junior Bar Conference, has seen to it that the number of your members actively at work in the official family has been substantially increased. We rejoice in your success not only because we are partakers of it but because we are proud of the younger generation in the profession.

Now I should like to see you undertaking a new commission, infinitely more difficult than anything that you have yet undertaken, and yet of paramount importance not only to the profession but to the public. Every generation, like every individual, either rallies to the task obviously committed to it or shirks it. The test of a given generation, like that of a given individual, is not success or failure. There are many seeming successes that are actually failures, just as there are many seeming failures that are actually successes. The test is whether or not we have the vision to see the problem that stands in our path and the courage to attack it with all the power at our command.

There are some generations that send my thoughts back to that beautiful and moving story of Chateaubriand, "The Last of the Abencerrages," in which is described in simple language the flight of the last of the Moorish kings from Spain. As he reached the peak from which he could see his future refuge in Africa and still look back on the beauty and splendor of what had once been his kingdom of Granada, he fell to weeping. Whereupon the Sultana, his mother, who was made of sterner stuff, exclaimed to him, "Weep now like a woman for the loss of a kingdom you could not defend like a man!"

There have been generations that have exhausted themselves in weeping. I have confidence that yours is not such. Each individual and each generation has a kingdom either to defend or to weep about. Am I wrong in supposing that for us it is the kingdom of the mind—the kingdom of the freedom of the spirit? Are we prepared as men to defend our birthright of freedom of the intellect—the gift to us of the Renaissance? Are we prepared as men to defend our birthright of religious freedom of belief—the gift to us of the Reformation? Are we prepared as men to defend our birthright of political freedom, of individual liberty guaranteed by constitutional rights against invasion of governmental powers—the gift to us of the American Revolution? Are we prepared as men to defend our rights of local self-government and of representative government—the gift to us of our Anglo-Saxon forebears? Or are we willing to sacrifice them for the proverbial "mess of pottage" or even less?

These are the questions that you must ponder, as men. Do not mistake me. I am not for one moment suggesting that you imitate George Chappell's birds, that flew backward rather than forward because they liked to go where they had been rather than where they were going. Nor am I recommending that you follow the example of some of our distinguished contemporaries who have been accused of being unwilling to go out while the New Moon was shining out of respect for the Old Moon. But I am suggesting that we should think carefully before we give up certain intangibles—gifts to us, but purchased by our forebears over many generations not only by the sweat of the brow but by the spilling of much good blood.

If these things interest you as men, then may I suggest to you as lawyers that there is no way in which you can do more to preserve this heritage of the past than by lending your intelligence and your strength to the improvement of the administration of justice, for I venture as my deepest conviction in the field of public life that, if our American form of government should fail, it will be because we have neglected our responsibilities for perfecting the processes of justice in our traditional courts, in our newer administrative tribu-

nals, and in our legislatures which were the source of these administrative tribunals.

It is a difficult task. It calls for intelligence to see the problem, and courage to solve it. The spirit in which it must be approached has never been better stated than by Mr. Justice Holmes:

"Your education begins when . . . you . . . have begun yourselves to work upon raw material for results which you do not see, cannot predict, and which may be long in coming—when you take the fact which life offers you for your appointed task. No man has earned the right to intellectual ambitions until he has learned to lay his course by a star which he has never seen—to dig by the divining rod for springs which he may never reach. In saying this, I point to that which will make your study heroic. For I say to you in all sadness of conviction, that to think great thoughts you must be heroes as well as idealists."

More and more am I coming to believe that it is the task of young men. Of the 39 signers of the Federal Constitution 24 were lawyers, and of the 24 five were of Junior Bar age and one within a year thereof. Among that group of six we may list with pride the names of Charles Pinckney, Gouvernour Morris, Rufus King, Alexander Hamilton, and James Madison, without whom it may be doubted that we ever would have had a Federal Constitution. These names may well be an inspiration to you. I can do no more than propose the question; it is for you to decide whether or not you will attempt to answer it. I can do no more than point the way; it is for you to decide whether or not you will undertake the quest.

If you should be interested, which I trust and pray you may be, may I venture one suggestion as to ways and means from the pages of American history. The men who achieved the American Revolution were for the most part not lonely individuals. There was The Sodality, organized in 1765 with men like Otis, Gridley, Quincy, and Adams as members. Otis stated their ideal:

"Let us form our society upon the ancient and best English authorities. I hope, I expect to see at the Bar in consequence of this Sodality a purity and eloquence and a speech surpassing anything that has ever appeared in America."

In the light of history, can we deny that they attained their goal? In New York The Moot was organized in 1770 with William Livingston and John Jay as its leaders. Of this organization Charles Warren says:

"Many learned questions were seriously discussed; and it is said a chief justice of the superior court even sent an issue of law to The Moot for its advice."

Let me give you another example. Many years ago three young men graduated in one small class from a little college in New Jersey. They came to Newark to study, and later to practice law. For years they studied together. One of them, Frederick Frelinghuysen, became Secretary of State of the United States; another, Cortlandt Parker, became the outstanding lawyer of the state, called upon by the public on many occasions, and one of the distinguished early presidents of this Association; the third, Joseph D. Bradley, became an Associate Justice of the United States Supreme Court, one whose name must be included in any list of the ten greatest judges of that august tribunal.

In this era of change and confusion the first requisite of public or private life is thought and reflection. I have tried to suggest one means by which in similar periods in by-gone times our leaders have sought to prepare themselves for their public responsibilities. It is my deliberate judgment that there is nothing that the Junior Bar Conference can do that would equal in significance the establishment of such informal groups all over the United States, dedicated to the study of public problems. If such groups of lawyers throughout the country would bring their thought to bear on the problems of our courts and of our administrative tribunals, I am sure that they would render an outstanding contribution to the quest of mankind for justice.

SOME CONVICTIONS AS TO LEGAL EDUCATION

Address by President Arthur T. Vanderbilt Before the Section of Legal Education on July 26

THE advancement of legal education and the promotion of higher standards of admission to the bar I enumerated yesterday in my annual address as among the outstanding achievements of the American Bar Association. Encouraging the bench and bar of three-quarters of our states to adopt the American Bar Association standards has been no easy task. Only those who have taken the pains to examine into the history of the American bar can appreciate how deep in the educational mire the profession had sunk a century ago. The profession and the public alike owe a profound debt of gratitude to the leaders of this Section for their work over a score of years in the campaign of education in the public interest.

But as we turn from the achievements of the past to the problems that confront us today, must it not be confessed that the remaining quarter of our states has been inexcusably backward? Must it not also be admitted that in many of the states there are many more law schools than the public requires? And, finally, must it not be conceded that in too many of our law schools there has been more formal than actual compliance with American Bar Association standards? How are these objections to be met? I appreciate, as I said yesterday, that neither the Association nor this Section has any power of compulsion over state or local bar associations, not to mention over the state courts that have jurisdiction over admissions to the profession. The action of this Section must always be indirect and persuasive rather than direct and compulsory. May I suggest, however, the desirability of establishing more intimate contacts between this Section and some of our other Sections like Judicial Administration, Bar Organization Activities, and the Junior Bar Conference. As in all large organizations, our work has had a tendency to become too departmentalized. The Sections should not be mutually exclusive, water-tight compartments. May I recommend to you an earnest consideration of the wisdom of calling on the members of these three Sections to aid you in the solution of the problems committed to you by the Association. I am sure that you will find a ready

response from all of them. Such a course will enlist in your behalf more judges and lawyers who are in commanding positions of influence on the bench and at the bar. It will be the means of opening to you the pages of our bar association journals, the legal periodicals and the daily press. It will bring into the ranks of our own Section many other judges and lawyers who are profoundly interested in the future of the bar.

But may I turn now from a consideration of the delinquent states and law schools to a far more pleasant subject—our better grade of law schools. No part of my work in traveling about the country—some 70,000 miles in all—has been more interesting than my visits to the great law schools of America. Nowhere in this country is there better teaching than in our professional schools, and nowhere in our professional schools than in our great law schools, and nowhere more eager students. And yet, as we weigh the work of such schools, there are at least three matters which seem to me to demand our consideration.

The most obvious drawback of our better schools is the defective training of so many of the applicants for admission despite their college degrees. How many of our prospective law students have been adequately trained to think, or to express themselves orally or in writing? How many of them have a substantial intellectual background of history, literature, and the social sciences? To be specific, how many of them have read the Federal Constitution, the Declaration of Independence, and the Articles of Confederation, or, if they survive that test, how many can make a similar response for Magna Charta or the Petition of Rights or, to return to America, the Federalist or the speeches of Abraham Lincoln? I will admit that this sounds like an indictment of much of the college education in America, but will anyone who has surveyed the field gainsay it? The law schools of the University of Minnesota, of the University of Washington, and of the University of Chicago have acted on their conviction that two years of planned pre-legal education is better than four years of college *a la carte*. Should not this Section interest itself in this aspect of pre-legal education, not only as to the quantity thereof but as to the content and quality thereof? I am not suggesting a prescribed college curriculum, but should we not at least make clear to the institutions of higher learning in this country and to our incoming students, as the medical schools have, what is reasonably expected of applicants for admission to professional study?

My next question arises with respect to the law school curriculum itself. In my speech at the annual meeting of the Association of American Law Schools last December, and to some degree again in my annual address yesterday, I pointed out that the chief problems confronting the bar of the country today are (1) the defects of judicial administration and procedure, (2) the failure to enforce the criminal law, (3) the deficiencies of administrative law, particularly with respect to adjudication, and (4) our maze of legislation. Is it not significant that it is with respect to these four subjects that our law school curriculum is most defective? Few law schools have any course in legislation at all. Only fifty-five of the ninety-four law schools approved by this Association offered any courses a year ago in administrative law, and most of them were inadequate, one-hour courses. The courses in criminal law in most schools have all but been eliminated, ignoring the claim of the Director of the Federal Bureau of Investigation that crime is the biggest business in the country. And, finally, how many law schools are there that teach judical admininstration and procedure from the standpoint of problems to be solved in the interest of litigants rather than as exercises in legal history or dialectic. Does not this neglect by our law schools of the most vital problems confronting the profession indicate most clearly the need of some activity on the part of this Section in relation to the content of the law school curriculum?

Next, I must speak of the matter of practice. All events in American legal education are either B.L. or A.L.—before Langdell or after Langdell. When Langdell was called to the Harvard Law School, training in the practice of the law was generally obtained by the apprentice system. The science of law was neglected by all save a few of the judges and of the leaders of the bar. It was Langdell's great mission to bring the science of legal thinking home to the profession. In doing so he naturally neglected the other element of the profession, the art, as distinguished from the science. Since his day, and due largely to his influence, the apprentice system, which under proper conditions did inculcate the art of practice, has all but disappeared. Langdell's successors, lacking his justification, have continued to follow his lead in the neglect of practice. To be sure, many schools have a system of moot courts and some have their legal clinics, but must we not go further, if we are to familiarize all our students, as we must, with law as a practice as distinguished from a science? It was not so many years ago that a student gained his knowledge of the practice from association with his preceptor. As a novice at the bar the first question that the young lawyer instinctively asked himself in any question of practice was, "What would my preceptor do in such circumstances?" Principles of legal ethics were absorbed through daily association with great lawyers rather than by formal instruction. Has the time not come for restoring the system of preceptorships which has always existed, in theory at least, in New Jersey, has more recently been established in Pennsylvania, and is voluntarily employed at the Western Reserve University School of Law of this city? With the aid of this Section and the bar associations of the several states, would it not be advisable for a law student to serve an interneship of a year, part of it in a small town, part of it in a small city office, and part of it in a large legal establishment, so as to become personally familiar with various types of practice? The courses in post-admission legal education which are springing up in various cities of the country, largely under the guidance of this Section, are of considerable assistance in this direction, but must not something further be done if we are to have in our system of legal education anything comparable to the invaluable interneship of the medical student?

In the third place, may I say a word as to the law school professor. The advent of Langdell at Harvard sounded the knell of the dynasty of former judges as law school professors. A third branch of the legal profession emerged. In the early days of the scientific approach to the law, the professors were necessarily men of the cloister engaged in tremendous research. Their successors in office have the benefit of their great work. They are now called upon not only to teach, but to cooperate with the bar in law reform, and increasingly to act as special advisers to the several departments of government. This rather recent devel-

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ANNUAL DINNER is HILARIOUS SUCCESS

AMONG the numerous successes which went to make up the Meeting at Cleveland the Annual Dinner deserves particular mention. These functions are generally something of a gamble as far as the speaking part of the program is concerned. There are sometimes too many speakers and sometimes the speakers make the mistake of talking too long, thus protracting the affair to wearisome lengths.

No such defect marred the Annual Dinner at Cleveland. The talks were all real after-dinner talks, with the light touch that should characterize such post-prandial utterances. Both Lord Macmillan and Mr. Justice Roberts took judicial notice of the familiar but too often neglected fact that good dinners and long and erudite utterances are hopelessly antagonistic, and acted on that assumption. As for Mr. W. Barton Leach, he has long been an exponent and chief protagonist of the view that the joy of life is something to be particularly fostered at such gatherings. "Barton at least is secure" is the way a hearer commented on a program for a former occasion.

The gastronomic portion of the evening being duly disposed of, President Vanderbilt assumed the role of toastmaster and keynoter for the proceedings. He sounded the light and humorous note at the outset—so distinctly that any marked variation from it later would have sounded pretty much like a dissenting opinion. He then proceeded to introduce the first speaker—Mr. Justice Roberts of the United States Supreme Court.

Introduces Mr. Justice Roberts

"I think one of the outstanding features of what thus far, at least, has been a very successful annual meeting," he said, "has been the fact that we have been privileged to have with us two of the Justices of the United States Supreme Court. (Applause.) I personally know that they have come here at considerable inconvenience to themselves, and yet I believe the results of their visit, intangible as they may seem, will more than repay them and the Court which they represent for the trouble to which they have been put, and I sincerely trust that this custom may be continued at each of our annual meetings. (Applause.)

"Our first guest of honor is a native of Philadelphia, educated in Philadelphia. He practiced law there for thirty-two years, taught in the University of Pennsylvania Law School for twenty years, I believe, and built up for himself a large and successful practice. Throughout his life in Philadelphia he was known by two characteristics; first, the simplicity of his living, and second, by his absolute independence in the practice of law.

"Those same two characteristics of simplicity of living and of independence of thought, our guest of honor has carried with him to his work in the United States Supreme Court. No one knows better than a man in his position how great is the cost of being independent. Perhaps the thought has never been better expressed than in the single sentence of Mr. Justice Holmes, uttered some twenty-five years ago. This is what he said: 'For I say to you in all sadness of conviction, that to think great thoughts you must be heroes as well as idealists.'

"And that, of course, is the task of any man who is independent, who is a liberal in the real sense of that much-abused term. These characteristics, we believe, are the characteristics of our guest of honor. I take great pleasure in presenting to you the Honorable Owen J. Roberts, Associate Justice of the Supreme Court of the United States!"

Justice Makes Good from the Start

Mr. Justice Roberts was received with great applause and at once proceeded to justify the audience's confidence.

"I know that personal references are in rather bad taste on an occasion of this kind," he began, "and yet in order to explain my situation tonight, I must make one. Your President came to see some of us last winter and asked us to come to the Bar Association. I don't know what sort of a deal he made with Brother Reed. (Laughter.) But I attempted to make a deal to come out and look at you, in the eye, and tell you I was glad to see you, that it was a pleasure to fraternize with you, and to be excused from making that abhorrent thing, an address. But after the President had definitely hooked me with a promise to come, he gave me that formidable frown of his and said, 'You know, Justice, I cannot put you on a program without putting you down for an address.' (Laughter.)

"So here I am, and I have it. It is entitled, 'A Critique of the Opinions of the Supreme Court of the United States, (laughter) Applying the Fourteenth Amendment Over a Period of a Hundred and Fifty Years.' (Laughter.) It is about three hundred pages long and has some footnotes taking up ten pages more. (Laughter.) Now, I put myself at your mercy. May I have the privilege of discarding it? (Applause.)

"Ladies and gentlemen, whether I have leave or not, I will have to leave it. When I looked at this audience tonight and consulted with myself, my hat was off to this crowd. Not everyone who wears a medal is a hero (laughter) and you are all heroes to put yourselves under the barrage of oratory that you have tonight. I salute you!

The Old Country Judge in New York

"Having scrapped my address, I think you are going to be very much in the situation of the old country judge in New York who was brought down under the assignment law to New York City to sit, and help out the local judges. They have their court of first instance there, their Supreme Court, divided into parts. This old fellow was sent into the Motion Part, and

that is probably the most difficult assignment in the Supreme Court of New York City.

"The men come up with motions, state them promptly, the judge rules almost immediately, 'Denied with Costs,' 'Granted with Costs,' 'Taken Under Advisement.' The thing goes like that. It would make your head whirl. Well, this old judge from the country had never seen a procedure like that and he struggled with it and he struggled with it for two or three hours, doing the best he could, reserving decisions on most of the motions because he didn't get the thing. (Laughter.)

"Finally, a dapper fellow, with a silk cord holding his glasses, a tail coat and spats, beautiful tie, came to the bench and said, 'If your Honor please, I have a very extraordinary motion, a very extraordinary motion. It arises under the Canal Act of 1820, with which your Honor is entirely familiar.

"Your Honor, of course, remembers that the Canal Act was originally passed in two sections, and then the Legislature of 1821 added a proviso to it, whereas the Legislature of 1823 repealed the first section, made the proviso a new section and let the second section stand; and, of course, your Honor is entirely familiar with the fact that in 1825, all that was repealed, the proviso enacted as a simple piece of legislation, whereas in 1826, the second section was passed, and we had a new Canal Act.' (Laughter.)

"Then he said, 'Has your Honor followed me?' The old judge answered, 'Yes, I think I have; but by gosh, if I thought I could find my way back alone, I'd follow you no farther!' (Laughter.)

What Does This Association Mean?

"Having discarded my address, it occurred to me that the most acceptable thing I could do would be to talk about you. It is a delicate form of flattery, I think, and I have some excuse tonight, because from what I have heard in the halls at headquarters, this is the largest, perhaps, and certainly the most enthusiastic and certainly one of the most useful meetings that this body has ever held. (Applause.)

"As I have been sitting around here, listening to the talk and getting the views of the men here and trying to appraise the work this Association is doing, I have been thinking, what is the significance of this Association, really? What is its fundamental function in the life of the country?

"You have done an enormous amount of valuable technical work, dealing with procedure, recommending legislation to correct inequities and lapses in our statute law, but all of that, ladies and gentlemen, is adjective. After all, the fundamental thing that this Association exists for, as I see it, is to maintain and to raise the standards of professional character and conduct in America.

"That is the fundamental job of this Association and if all its activities do not ultimately lead to and promote that great end, the other things that you have done are trifling, and they are not worthy of the Association's continued existence. I think you have sensed that. I think the work that this Association has done in holding up the standards for the intellectual qualification of applicants to the bars throughout the country speaks for itself.

"As the result of the period of a year's work, the standards of professional education have been pushed forward at an amazing pace and to a most satisfactory point. But, ladies and gentlemen, the standard of professional character is to be viewed in two aspects. It consists of two factors, intellectual and moral. We must be as zealous that, in promoting the intellectual qualification of the young men and women who come to our bar, we do not neglect the moral qualification as well. . . ."

A Contrast in Methods of Bar Admission

Justice Roberts then contrasted the old method of coming to the bar in America with that prevailing now. The old method was not wholly satisfactory from the intellectual viewpoint but he believed it was adequate on the moral side. The thing that disturbs him now, he said, is not that we are not giving the proper intellectual training to those who come to the bar but that we cannot apparently be assured of the moral qualifications.

"The condition," the Justice continued, "is particularly acute in the great cities. You take a city with a bar of anywhere from three thousand to twenty thousand men, and such exist in the United States. Most of the young people who graduate from law school are not known to many members of the bar, not to many outstanding members of the bar certainly. Most of them cannot obtain positions in offices of high repute. They have spent years of effort and money and their families have made sacrifices to put them in the bar, and they come to the bar of a great city without money, without friends, without influence, with no hope of clients, and what happens?

"They fall into bad ways. They have got to live. Heavens knows what you or I would have done if subjected to some of the stresses and temptations that these young people are subjected to in the great city bars today. The older I get, the more lenient I am in my judgment of these young people who do fall into bad ways, because no man would put out a hand of friendship and no one cares. . . ."

After a further brief discussion of the situation, the Justice concluded.

The Great Problem of the Association

"You have carried the flag forward on the intellectual side. The great problem of this Association, in my judgment, is to determine how the bar is to prevent overcrowding, the bringing to the bar of hundreds every year, of people who are doomed to disappointment and certain not to be needed in the community where they elect to practice. The problem is how to put professional pride in one's achievement, in one's character, into our large, scattered, diverse bars in the great centers of population, and to give the same kind of sturdy character to the standards of professional conduct as we had a hundred years ago in the small community and as we all hope to have in every community. There is your challenge, ladies and gentlemen!"

The audience rose and applauded, more firmly than ever convinced that the Supreme Court was fully capable of taking care of any situation that could arise. And this stimulating confidence in the Judiciary carried over into the applause that greeted the next speaker, Lord Macmillan. President Vanderbilt said, by way of introduction:

Lord Macmillan Introduced

"Many of us had the pleasure, two years ago at Boston, of hearing Mr. Leonard W. Brockington of Winnipeg. Mr. Brockington was counting very much on being with us but he has been prevented from coming by imperative professional engagements. For-

tunately, at the last moment, I was able to enlist the services of a distinguished gentleman from abroad.

"Those of you who heard him at the breakfast of the American Judicature Society or at the luncheon of the Harvard Law School Alumni Association or at any other groups, will not need to be told of his versatility. All he has to do, when he is called upon, is to let him think to himself, page 65, page 54, page 153, of law and other things (laughter) and talk to you on law in politics or law and order or law in ethics or a law in religion. I am not advertising, but those are the subjects of some of his books. In fact, he can take you along just as safely and securely as any Justice of the Supreme Court that I know. (Laughter)

"Then, in addition to that, he has many qualifications that I did not dare to mention last night on that very formal occasion. For example, he was the Chairman of the Royal Commission on the British Pharmacopeia. He was Chairman of the Home Office Committee on Street Offenses. So the versatility is there. I have not the slightest idea what he is going to talk about, but I know that whatever it is, it is going to be very interesting, I present to you Lord Macmillan!"

Speaker Gets Off to a Flying Start and Keeps It Up

The audience arose and applauded. Lord Macmillan said, in part:

"I think Mr. Vanderbilt must have been studying the Scriptures. Being somewhat at a loss as to whom he might invite to take the place of Mr. Brockington, whose absence we so much deplore, there occurred to him these words: 'The Lord is my helper.' (Laughter)

"That is something unlike what happened to a certain missionary who was proceeding to the Chinese mission field, who had a text inscribed on his baggage as the symbol of his mission. 'The Lord is my helper' was printed upon each of his trunks, but below it, a porter wrote, 'Not wanted on the barge.' (Laughter)

"I think my friend took certain risks tonight when he let me loose upon this assembly. Think of the danger of the situation! I am a lawyer. Well, perhaps he was prepared to run the risk of that although someone has said—and perhaps you have had a little experience of it in the last few days—that the legal mind chiefly consists in illustrating the obvious, explaining the self-evident and expatiating on the commonplace. (Laughter)

"That was bad enough, but I have another disqualification even more material. I am a Scotsman. (Laughter) We are, as you know, a laconic and a literal race. That was never better illustrated, I think, than by a colloquy which took place on one occasion between a cheerful English tourist who arrived in a little Scottish hamlet during his vacation. The morning after his arrival, he strolled down the village street and the first place he came to was the village churchyard. That is the form of tourist attraction which we provide in Scotland. (Laughter)

"Leaning over the wall, he saw a grave digger applying himself with great vigor to his melancholy task. Being a kindly soul, he said, 'Hello!'

"'Hello.'

"'I suppose things are not so very cheery here, are they?'

"'Things are not so grave here as they are with those below the soil.'

"This, you will admit, was a somewhat trying opening to a cheery conversation, but the Englishman, not the least rebuffed, returned to the task and said, 'Oh, yes, oh, yes, but I suppose people don't die here very often, do they?'

"'Only once, sir!'" (Laughter)

"But I venture to say that even the most literal and laconic inhabitant of the northern portion of the British Isles would be moved, if not to eloquence, at least to volubility, by the charm of your hospitality and the generosity of your welcome, and may I say at once how much I admire the chivalry of the American Bar Association?

Quotes Choate's Tribute to the Pilgrim Mothers

"I have been so accustomed to having to face large audiences composed entirely of one sex, and that my own, that to be privileged, as I am tonight, to address this charming and variegated audience, serves to recall one of the delightful sayings of probably the very prince of after-dinner speakers—I mean, the late Joseph Choate, Ambassador to the Court of St. James.

"He had, as I have, to make a speech after dinner and his subject was the Pilgrim Fathers. He said, 'Gentlemen, we ought indeed to bear in our minds tonight the Pilgrim Fathers, for they endured much and they achieved much, but let me suggest that we also have in our hearts the Pilgrim mothers, for, gentlemen, not only did they endure all that the Pilgrim Fathers did, but they also endured the Pilgrim Fathers!' (Laughter)

"That is a story which I notice always succeeds eminently with fifty per cent of a mixed gathering. (Laughter)

"My orders tonight from your genial Chairman are simple. There was an interesting custom which you must have remembered from the old days, whereby at the close of term, the grave practitioners of the North in the Temple by the Thames in London surrendered themselves for a time to relaxation from their more serious labors. The Abbot of Misrule was installed as Master of Ceremonies and even the most sedate judges of the English Court joined with the bar in happy hilarity. There were stage plays. You will remember that 'Twelfth Night' was performed for the first time in the Middle Temple Hall in the presence of William Shakespeare there among the lawyers. It was there that Queen Elizabeth danced on a celebrated occasion.

"Tonight, you who have been all so sedulous in your labors in behalf of the profession are entitled, I venture to say, to just a little relaxation and so, the Abbot of Misrule is installed as the Master of Ceremonies for the remainder of the evening.

Experiences at the Scottish Bar

"I don't know that I can contribute anything very entertaining. One thing I should like to say, however, before I tell you one or two of my experiences at the Scottish bar, is that not the least of the privileges which I have enjoyed here has been the making of the better acquaintance of the President of the American Bar Association. (Applause) There are words which seem to me peculiarly apt to his case and which even in his presence I will venture to quote, for they are the words of Rudyard Kipling. He said on one occasion, 'Recognition by one's equals and betters in one's own country is a reward of which a man may be unashamedly proud,' and that is the form of pride which I think the President may well enjoy. (Applause)

"It is said that once a fairy paid a visit to a series of nurseries in order to bestow a gift on each little child. Coming to the first nursery, the fairy bent over

the child, kissed the little child on its forehead and that little child became one of the world's greatest thinkers. The fairy passed on to another nursery and there kissed a little child on its mouth, and the child became one of the most distinguished orators of the age. The fairy bent over another cradle and kissed the child upon its hand and the child became a great prophet. I do not know where, precisely, the fairy kissed the president, but I do know that his conduct in the Chair has been perfectly admirable! (Laughter)

"Perhaps you will bear with me while I add just one or two Scotch stories to your repertoire. You know we have in Scotland a tradition of a very pretty judicial wit of our own—although it is said that Scotsman jokes are difficult—and probably one whose name is best associated with that happy faculty was the late Lord Young, a very remarkable judge of the Scottish bench, who had the faculty of saying the most trenchant things.

"I recall that on one occasion he attended with the corporation of the City of Edinburgh on their annual outing to inspect the waterworks of the city. He was seated at the luncheon which succeeded the inspection, besides the Lord Provost of the city—that is, the mayor of the city—and looking along the table, he said to the Lord Provost, 'Who is the gentleman sitting three places from me to my right? I mean the gentleman with the conspicuously red nose.'

" 'Oh,' said the Lord Provost, 'that, my Lord, is the Treasurer of the Waterworks.'

" 'Oh,' said Lord Young, 'may I suggest that you made a most excellent choice. I would trust that man with any amount of water!' (Laughter)

The Judge and the Poet-Laureate

"Another delightful anecdote associated with Lord Young, which I think is probably the most trenchant piece of literary criticism I have ever heard, was to the effect that one night he was dining at the high table and Alfred Austin, who was the Poet Laureate of England, but a poet whose poems I should prefer to spare you from reading, was also there. Somebody said to the Poet Laureate, 'Wouldn't you like to meet the distinguished judge who is here?'

" 'Oh, yes, I would like that very much. Introduce me to him.'

"So he was taken up to Lord Young. Lord Young looked at him from under his bushy eyebrows and said, 'Well, Poet Laureate, are you writing much poetry just now?'

"The Poet Laureate, gurgling and blushing as an author has to do under these circumstances, said, 'Oh, not very much, my Lord; just enough to keep the wolf from the door.'

"And said Lord Young, 'Do you read the wolf your poetry?' (Laughter)

"And just to show the relation that exists between the members of the Judiciary, I always recall that after Lord Trainor had had his portrait painted by one of the foremost artists of the day and had several times tried to inveigle Lord Young into his drawing room to look at his portrait, of which he was inordinately proud, he got him in one afternoon, placed him in front of the portrait, and said to his fellow judge, 'Well, Lord Young, what do you think of it? Do you think it is like?'

"Young looked at it with an appraising eye for a minute and said, 'Yes, painfully like!' (Laughter)

"However, gentlemen, I must not detain you unduly with these anecdotes, even at this date. It has been my incomparable privilege at this hospitable board to sit beside, in succession, two of the Associate Judges of the Supreme Court. I may be permitted to say what a delight it has been to me to make their better acquaintance. Now when I read their judgments, as we often do with profit in my court, instead of being merely names to me, they will be people whom I will know, people with whom I have sat at table and whom I venture, if they will permit me on such short acquaintance, to call my friends. And what a difference it makes! Everybody knows the difference it makes when you have met the person whose writings you are reading. Instantly your paths of associated memory call up the figure of the man whom you have come to know, and his writing has a vividly alert appeal which the mere cold print by itself could not give you.

"It is not merely that I have had the pleasure of meeting my brethren, but I have had the privilege of meeting a great many distinguished lawyers of the American Bar, and there has been brought home to me, and I shall take home with me, the thought of the great brotherhood in which we are all together enrolled. There is a great task before us, some aspects of which have been emphasized by my brother who has just spoken to you, but there are many great problems affecting our profession. Never were its duties greater, its responsibilities nobler than they are at this moment in the world's history, and my last words to you, in thanking you for your charming hospitality, will be in the old words with which the King's speech at Parliament concludes, 'May the blessing of God rest upon your members.' "

W. Barton Leach Brings Affair to Hilarious Close

The audience rose and applauded, after which the next speaker, Professor W. Barton Leach, was introduced. Mr. Leach's accordion accompanied him to the dinner and during his remarks. The accordion is probably the best known instrument of its kind in the country—certainly among the legal profession—and its owner is also almost as well and favorably known. The pair put on an extremely good show entitled "Folk Songs."

"My, I never dreamed it was so late!" exclaimed several ladies and gentlemen as they moved to the door at the end of the evening. Could anything more significant as to the character of the affair be said?

ERRATUM

Error in the course of hasty assembling of the summary of the 1938 "annual meeting in brief," in our August issue, left the surprising statement, as to the attitude and action of the House of Delegates upon the report of the Committee on Administrative Law, that "There was marked resistance to the idea that the lawyers who practice before these tribunals [the administrative agencies of government] should *not* be in any way subjected to discipline, domination or control on the part of the agencies before whom they practice." Of course the "not" was unintended and contrary to the fact. With the negative omitted, the sentence would express fairly the manifest opinion of the House of Delegates.

WORK OF THE AMERICAN LAW INSTITUTE*

Address Made to the American Bar Association at Cleveland Meeting by Hon. Joseph C. Hutcheson, Jr., Member of the Council of the Institute

MR. VANDERBILT, your lawyer-professor President, with the rich name and richer personality, wrote me about my place on the program:

"We are emphasizing this year the duty of the Bar to aid in the work of adjusting our law to the requirements of our time, particularly in the field of Judicial Administration. Our program on Wednesday morning is a crowded one, and it would be helpful if you would confine your remarks to about fifteen minutes."

Thus subtly reminded, indeed admonished, that your Wednesday morning program was streamlined, and would be crowded with judges hitting the sawdust trail, scrouging each other on the mourners' benches, and going sanctified on the new administrative realism, it was at first with extreme reluctance and a sense of abasement akin to shame that I went about the preparation of my paper. For was not the Common Law—with whose past and present directly, and its future indirectly, it is the business of the Institute to deal—a most old-fashioned need, almost an entirely outmoded subject, in these days of legislative and administrative activity? And was not I a judge? Was it not I and my kind who were to be the whipping boys of this occasion, as ones who have concerned ourselves too much with the law and its administration as it has been, too little with it as it ought to be; too much with the substance of the law, too little with its effective administration? Besides, had not the Supreme Court, in Erie vs. Tompkins, not only disinherited poor old General Federal Law, its own particular common law offspring, but disowned it, as conceived in unconstitutional sin and born in judicial iniquity? And was I not, because of unwilling association with a creature so without the pale, myself without it?

For had I not, though of the house of those who opposed the rule of Swift vs. Tyson, taken the easy way of conformity instead of standing as I ought crying in the wilderness—"repent ye—repent ye!" These gloomy reflections on my parlous state as judge so disturbed and unnerved me, that but for a little stubbornness inherent in the judicial office, and the fact that I had already agreed to appear, I should have turned tail and fled incontinently.

Preparation begun, however, my exalted position here as the representative of those master logomachists, the law professors, who write and rule our Restatement, came more clearly to my mind. I experienced again the strange, the mystical, the delectable metempsychosis I had once before undergone when, summer teaching at Northwestern, I had felt the sin-hoary soul of the judge moving out, the sinless soul of the professor moving in. Enlightened, uplifted, purified, I commenced to see my own judicial sinnings and shortcomings as in a glass darkly, those of other judges face to face. At long last I stood erect, in flesh a judge, in spirit a professor among professors, those present darlings of the gods. For had not my selection for this post over all others in the Institute shriven me of my judicial sins, and marked me as worthy to sit in the professorial seat, to speak with that voice? Was I not one of the anointed ones, even one of the professors, the holy ones of the law, who like cherubim and seraphim continually do cry? Thus metempsychosized and released in my spirit by my office as Institute Spokesman, from my sins of the flesh as judge, I stand before you professorially. So standing, I take leave to pedagogically remind you that as faith without works is as dead as works without faith are, so administration without law is as dead as law without administration. So standing, I affirm that all the stewing and pothering over, the hurrying and scurrying after, a streamlined administration of law will have been all in vain, without a more or less streamlined law to administer.

Further, professorially right as I am in the livery of our lady of the Common Law, whose devoirs we of the Association as well as we of the Institute are sworn to do, I stand here to say in the teeth of, and to maintain it upon my body and with my life against, any who deny it, that the vows we of the Institute have made, and the trysts we have kept and will keep with our Lady, have already greatly served, and will in future serve more, to fit and keep her fit for a streamlined administration. I am here to say, too, that we of the Institute are fully aware of the fact that the common law, more than any other system of law, is dependent upon its administrators, the judges, for its growth and life. We are as aware as any, too, that the periods when the common law has made its greatest progress, and the actual and the ideal have drawn close in the law, have been those in which judges, greatly conscious of their function to do justice, have been not merely diviners, patterers, soothsayers, lever shifters of legal slot machines, but great administrators, masters of method by which justice is done.

There is not one among us but sees the great push now making on the administrative sector as perhaps a decisive movement in the advance of the whole legal front. For we know, as well as any, that the idea that judging is administration is as old as judging is, and that the stirrings for reform in the administration of justice now manifest are not merely new stirrings. They are the ancient fundamental stirrings revived and modernized.

Just as when communities go religiously dead, and revivals sweep over them to make religion live again there, the religion when it comes is in spirit, though not in form, the same old religion, so, ever recurring, these stirrings in the law for better administration are not new, they are revivals. For the full truth of the matter is that in method law is ever changing; in function, the function of its administrators, the judges, to do justice, it is ever constant. What strictures and prevents the actual from growing ever nearer to the ideal in the law is, and always has been, administrative lack. Because of this lack, form is taken for substance. Method becomes more important than function. Predictability, certainty and fixity of line,

*This report was presented to the Assembly of the Association at its second session.

rule and precept cease to be elements of, they become, law. Transcending all other elements in it, they stand for the time for justice itself; the law ceases to be the means to the end, it becomes the end.

As law crystallizes and rigidifies under this treatment its ministers, the judges, become administrators less and less, oracles more and more. In these periods judging is not administration, it is legal technicalism, the sin against the Holy Ghost. A legal technicalism which, manifesting itself in a progress from precedent, following to a worship of legal slot mechanism, has also developed as a by-product for the unprovided cases in the law, those for which no slot machine pocket can be found, a technique best described as oracularism, divination, soothsaying. A technique which enables some judges to take decisions from the books like the conjuror takes the rabbit from the hat, carrying on the while a bewordling which convinces most of his hearers, and sometimes himself, that the rabbit has been there all the while. In such times not Whirl, but the master logomachist, is king. Then, in periods of change and revival, the administrator appears again. Greatly conscious of his function, he tumbles down the penthouses in which formalism has confined the law, and working sometimes with old straw, sometimes with new, sometimes without straw at all, he lifts the temples of the law higher toward the heavens where, too long housed without change, its administrators cease again to be administrators, become again diviners, patterers, soothsayers, lever shifters of legal slot machines, until the revival comes again.

We of the Institute believe that we are now in the bursting time of one of law's long, slow, but greatly glorious springs, perhaps the greatest for the judiciary and for the law in many centuries. We look for a great flowering. It is a commonplace now to say that the functional approach of the judge to his work in administering justice is more important than the methodic; that, in short, a judge must, in discharging the great office to which he is called, be greatly conscious of his dynamic function.

Everywhere people are inquiring "what are you doing?" in order to know why you are doing it. Everywhere the predicate is being laid for more and better administration, a more lawful justice, ever juster law. Pragmatic idealists, idealistic pragmatists, are abroad in the law. They want to know if the tools we have are working well; if not, can they be made to work well; if not, why not scrap them for new and better tools? It is as if there were a great wind, blowing open the closed shutters of our minds, dashing down all signs pointing taboo there, and searching out the closed and dark corners, to cleanly sweep away the dust and rubbish they have gathered. It is a commonplace now to say that the naturalistic thinking which is distinctive of, and has been so fruitful in, the physical sciences, will prove as fruitful in the social sciences. It is a commonplace now to say that it is such thinking on the part of lawyers and judges which has made and will make law less standardized, more responsively humanistic, the social order less mechanized, less standardized, less hopelessly despairing. It is such thinking which marking out and making plain the way the common law has gone, its life and growth, has kept and will keep it responsive to the needs of the social life, has shown and will continue to show crystal clear, that changeless, it is ever changing.

Because we know this is so, we of the Institute are supporting in every way and on every front we can the cause of administrative betterment. We approve and uphold you in what you are doing in that way. As to the works we are doing and will do, it is not necessary here to go into detail. The June number of the JOURNAL has given generous space to the reports the Director and Mr. Goodrich made to the Institute's May meeting, in which these details are given. It is sufficient here to say that we have cooperated with the National Conference of Commissioners on Uniform State Laws and your committees in drafting statutes on various subjects. We have drafted a model code of criminal procedure, various chapters and parts of which have since been incorporated in many of the laws of our states. We have cooperated with the Association of American Law Schools and your Association in considering what, if anything, our respective associations could do to improve criminal justice. We have, too, given the most careful and painstaking consideration to the advisability and feasibility of entering upon a comprehensive study of criminal justice including the production of a comprehensive code of criminal law and administration. All these things we have done and are doing directly in the interest of better administration.

But we know that our greatest contribution by far to the cause of law administration is the Restatement itself. In sponsoring and producing it we have been ever mindful that the strength of the common law is its hospitality to improvement, and we have stated the law not to fix it in, but that it may be the more readily freed from, its faults and imperfections, so that its future may be greater and more glorious than its past. We of the Institute believe with Holdsworth, that "philosophical speculation about law and politics is an attractive pursuit. A small knowledge of the rules of law, a sympathy with hardships which have been observed, and a little ingenuity are sufficient to make a very pretty theory. It is a harder task to become a master of Anglo-American law, by using the history of that law to discover the principles which underlie its rules, and to elucidate the manner in which these principles have been developed and adapted to meet the infinite complexities of life in different ages." We of the Institute cherish, as much as any, the "glorious uncertainty," the iridescent beauty of a changing law, with its sense of vista and the far horizon, but we believe in the philosophy of foundations, that first things should be put first, that men's feet should be upon the ground. So believing, we do not report to the American Bar Association, from whose membership ours is largely made up, apologetically, as those must who, dealing with the old in terms of the new, are engaged merely in putting new wine into old bottles, new patches onto old garments. We report proudly, as those alone may do who are engaged in and with the very fabric of progress, a fabric which endlessly emerges from the loom in nobler and richer patterns for the future, under the guidance of those who, despising not prophesyings, quenching not the spirit, proving all things, holding fast that which is good, keep spiritual continuity with the traditions of the past.

In one of his most eloquent passages Woodrow Wilson, the lawyer-professor President, reminded us in 1912 that true progress can only be made in this way:

"I believe, for one, that you cannot tear up ancient rootages and safely plant the tree of liberty in soil which is not native to it. I believe that the ancient traditions of a people are its ballast. You cannot take a tabula rasa upon which to write a political program. You cannot take a new sheet of paper and determine what your life will be tomorrow. If I did not believe that to be progressive

was to preserve the essentials of our institutions, I, for one, could not be a progressive."

In his letter, written in May, 1938, to the Director of the Institute, President Roosevelt in effect said the same thing:

"The painstaking, scholarly manner in which the Restatement has been done, and the distinction of those who have devoted themselves to it, have caused the work to be recognized by most of the Appellate Courts of our states as prima facie authority as to what the law is. This achievement will go far to preserve our common law system by correcting uncertainties in the law, which arise from the constantly increasing mass of case precedent.

"The strength of the common law was its hospitality to improvement. No one can read the legal record of the last year without appreciating that we in our day are again reshaping our legal philosophy to keep pace with the needs of our people and the spirit of our institutions."

Speaking for myself, as one who believes that judges must have a reasonable freedom of decision, and liberty of choice as between one suggested rule and another, I confess myself greatly debtor to the work and works of the Institute. For I believe it to be of the highest importance that the common law, as it has been decided, be clearly stated and set down, so that the relative weights of the social and economic advantages relied on to turn the scale of justice in favor of one rule contended for over the other, may be clearly and definitely known, and the choice knowingly and intelligently made. I believe as firmly as any, that "the law has its piercing intuitions, its tense apocalyptic moments"; that "the decision often depends upon an intuition more subtle than any expressed major premise"; that "the vital motivating impulse to great decisions has often been merely an intuitive sense of what was right or wrong for that cause"; that "while too often cases must be decided without that feeling which is the triumphant precursor of the just judgment, sometimes after long travail and struggle of the mind, there comes to the dullest of us, flooding the brain with the vigorous blood of decision, an intuitive judgment that the plaintiff should be protected by a decree, or should be denied protection. I believe, too, that such judicial intuitions, and the opinions lighted and warmed by the feeling which produces them, not only give justice in the particular cause, but like a great white way, make plain in the wilderness the way of the law for judicial feet to follow.

It is just because I do, that I feel that the Restatement will be of inestimable value to us all. For, devoted to making clear and plain for all of us the way the law has gone, in order that we may know the way it should and will go, it will give us firm starting points for new departures. It will permit us, in the really unprovided cases, when the large dice, the "great and goodly ones" the Restatement furnishes, will not serve, to resort confidently and unashamed as the only way out, to the "little small dice" of intuitive judgment. It will prevent us, as sometimes heretofore some of us have done, from resorting to them unnecessarily when the decided law has already gone along that way.

And now, lest it be thought that, having come into the Institute at the eleventh hour, and as one born out of due time, I speak not by authority, but of myself alone, let me quote the words of the Director himself:

"The third and even more important type of scholarly work which we may find will result from the Restatement is the more intelligent study of what may be termed legal trends, and the forces which adjust law and its administration to the needs of life. The Restatement is giving to American and foreign legal scholars a picture of important parts of our law, not as it was, nor as it will be, but as it is. The rule of stare decisis is a rule essential to its existence, but it is also a rule which, overemphasized, kills. Those who study our legal past, as well as those who seek to discover what the law should be, have often found themselves hampered by the absence of agreement as to what the present common law is. The Restatement gives that which we have never had before, a reasonably authoritative expression of the present law. It is not a treatise, it is not a series of monographs discussing important legal decisions, but it is a new starting point from which better treatises and monographs can be written. We may be glad that the Restatement is making possible a knowledge of our law in other countries, and also that it will make possible in this country a general intelligent understanding of the similarities and differences between our own law and the law of foreign countries. Above all, we may be glad that the Restatement instead of hindering, should and doubtless will, stimulate that study of our legal past, and of our present legal needs, vital to the proper development of law and legal institutions."

Because we know that this is so, we stand here confidently asserting that perhaps of all the formal movements now under way affecting the future of the common law and its decisions, the work of the American Law Institute in restating it, and the Restatements themselves, have released and will continue to release, more vital forces for the advancement of the social order than any other. But because it knows, as well as any of you, that as the material of the common law has always been and in the future will increasingly be, bettered by good administration and that the betterment of the material of the law will make administration better, it sends me here to join with you in the toast of this session—Administration, Administration, Administration!

Chicago Bar Librarian Reports Acquisitions

Frank J. Loesch is the sole surviving participant in the Leslie Carter divorce case (152 Ill. 434). Recently he has given at one of our luncheons his reminiscences of that case, in which he served as junior counsel to Melville W. Fuller, later Chief Justice of the United States. We are now again the beneficiaries of Mr. Loesch's bounty. He has presented to our library eight rare nisi prius reports of famous English trials for adultery in the eighteenth century which he collected at considerable cost fifty years ago in preparation for the Carter case.

"For example, we have here:

"'The remarkable Trial of the Hon. C. Wyndham, for adultery with the Wife of Anthony Hodges, Esq., including Ancedotes of an Illustrious Personage, a Flemish Banker, etc., etc. Before Lord Kenyon and a Special Jury in Westminster Hall; February 24, 1791.'

"The 'Illustrious Personage' was the Prince of Wales who it appears was one of the many admirers of the lady. His name was blurted out on the witness stand by the lady's maid, apparently to the consternation of Lord Kenyon and both counsel."

And there are nine other cases just as intriguing as this. The Law Librarian of the Chicago Bar Association, from whose department in the Chicago Bar Record for April this extract is taken, warns that the volumes will be kept under key.

A COMPREHENSIVE PROGRAM OF JUDICIAL REFORM

Summary of Recommendations of Section on Judicial Administration at Cleveland Meeting

THE keynote of the Cleveland meeting was undoubtedly the betterment of the administration of justice. In this connection the far-reaching proposals of the several committees of the Section of Judicial Administration are most significant. Having received the approval of the section and the House of Delegates, they now represent the position of the American Bar Association in the field of procedural reform. Furthermore, the House agreed that the advocacy of these proposals should be made a special program of the Association for the coming year.

A digest is made of the several recommendations under the head of the committee from which they originated.

Judicial Administration

(1) Practice and procedure should be regulated by rules of court, and courts should be given full rule-making power to this end.

(2) The judicial system in each state should be unified and the handling of judicial business should be supervised by an administrative judge.

(3) Judicial Councils should be strengthened and representation accorded judiciary committees of legislatures on these councils.

(4) Quarterly judicial statistics should be required.

Pre-Trial Procedure

(1) Courts in metropolitan areas should provide for pre-trial hearings, and the feasibility of the plan should be investigated elsewhere.

(2) The time of the pre-trial hearing in relation to the actual trial should be determined by local conditions.

(3) The pre-trial hearing should be had before a judge.

(4) The pre-trial hearing need not involve a disclosure of proof which counsel does not wish to disclose.

Trial Practice

(1) The common law function of the trial judge should be restored.

(2) The judge should orally charge the jury after the argument of counsel, including a statement of the law and comment on the evidence, leaving the final determination of all questions of fact, however, to the jury.

(3) The judge should be actively in control of the trial at all times.

(4) In the examination of jurors on their *voir dire* the court should be permitted to conduct the examination if it so desires.

(5) Alternate jurors should be selected in prospective lengthy trials.

(6) The scintilla rule of evidence should be abolished.

(7) The trial court should be authorized to submit specific issues to the jury to be considered in connection with the general verdict.

(8) The judge should have power to grant a partial new trial.

(9) The practice of granting judgment notwithstanding the verdict should be adopted and extended.

(10) Voluntary non-pros should be permitted only within the legally reviewable discretion of the trial judge.

(11) Auditors or masters may well be used in both jury and non-jury law cases, as well as in equity cases, which involve complicated fact questions. In jury cases the report of the auditor should be admissible as evidence.

(12) The issuing of preliminary injunctions without a hearing should be forbidden, but a temporary restraining order may be issued when necessary to obviate irreparable injury.

(13) Promptness in the rendering of judicial decisions should be encouraged by use of an "administrative judge" and statistical requirements rather than more rigid means.

(14) The new federal rules of procedure with respect to the trial of cases should be uniformly adopted.

Selection of Jurors

(1) Juries should be selected by commissioners appointed by the courts.

(2) The Cleveland system of jury selection should be adopted in metropolitan areas.

Law of Evidence

(1) Harmless error in the admission or rejection of evidence should not be the ground for the granting of a new trial.

2) An error in the admission or rejection of testimony in a trial by a judge without a jury should not necessitate the granting of a new trial unless the findings are affected thereby.

(3) Formal exceptions to testimony should not be required for consideration of error on appeal. It should be sufficient if the party makes known to the court at the appropriate time the action desired.

(4) The testimony of an interested party as to transactions with a deceased person should be made admissible under certain restrictions as to the good faith of the declarant.

(5) The declarations of deceased or insane persons should be received in evidence after findings by the trial judge as to the good faith of the declarant.

(6) The trial judge should be permitted to require the disclosure by a physician of the privileged communication of a patient if necessary for the proper administration of justice. The privilege against non-disclosure should not be extended to accountants, social workers or journalists.

(7) The Uniform Business Records as Evidence Act should be adopted.

(8) As to ordinary matters witnesses should

be permitted to state their conclusions subject to explanations.

(9) The Uniform Expert Testimony Act should be adopted.

(10) The introduction of certified copies of official records should be permitted.

(11) The uniform act requiring judicial notice of the common law and statutes of the other states and that the law of a foreign country be determined by the court should be adopted.

(12) Witnesses should be sworn separately and the oath administered in a dignified and understandable manner.

(13) The provisions of the new federal rules relating to discovery should be adopted in all the states.

(14) The provision of new federal rule 43 (b) with reference to the impeachment of one's own witness should be adopted in all the states.

(15) Any rule of evidence need not be enforced if the judge ascertains that there is no *bona fide* dispute between the parties as to the existence or non-existence of the facts involved.

Law of Evidence

(*Recommendations for reference, further study, etc.*)

(1) The formulation of a simplified code of evidence rules for use in jury trials should be selected as a subject for the Ross Bequest Essay.

(2) State and city bar associations should study methods of calendar administration and urge the adoption of improved methods by their courts.

(3) State and city bar associations should study and make proper recommendations concerning the abuse of continuances.

(4) State and city bar associations should study and propose remedies for the intimidation of witnesses.

(5) Legislatures should not make changes in procedural and evidentiary rules without notice and opportunity to be heard being given to state and local bar associations.

(6) The Section on Criminal Law should be requested to study and report on desirable limitations on the privilege with reference to attorney-client communications.

(7) The American Medical Association should be requested to examine its canon of ethics regarding the giving of evidence by one physician against another in malpractice suits with a view to removing the obstacle the canon is sometimes interpreted as interposing in such suits.

(8) The Criminal Law Section should study the experience of those states which permit comment on the failure of an accused to testify in a criminal trial.

(9) A committee should be appointed to study the needs and possibilities of simplified rules concerning presumptions and burden of proof.

(10) A committee should be appointed to examine and formulate the exceptions to the hearsay rule with view to improvement in the working thereof.

Appellate Practice

(1) Inferior courts should be improved so as to eliminate the apparent necessity for trials *de novo* in a higher court. The abolition of the justice of the peace courts should be considered with the substitution therefor of a more modern inferior court system.

(2) Pecuniary limitations should be set on appeals as of right.

(3) The filing of a simple notice of appeal should be sufficient to vest jurisdiction in the reviewing court. The notice should be filed in the lower court for convenience sake.

(4) Supersedeas bonds should be fixed by the court at such an amount only as will adequately secure the appellee in his judgment. The filing of the bond should be permitted at any time and the enforcement of the judgment should not be stayed until it is filed.

(5) Errors should be assigned only in the briefs and in the form of points relied upon for reversal; and should not be required prior to making up the record on appeal unless the appellant proposes to omit some portions of the proceedings and record of the trial court.

(6) Typewritten records should be permissible in all cases and, where the record is printed, the charge therefor should not be an item of cost.

(7) All papers on file in the trial court which constitute part of the appellate record should be sent up, if possible, in their original form.

(8) Abstracts of the record should not be required, such matters as the parties desire to refer to being set forth in appendices to briefs.

(9) The appellant should be permitted to set forth testimony in question and answer form and the appellee should be permitted to require him to do so in substitution for any condensed statement.

(10) Either the trial or appellate court should have the power at any time to correct the record by appropriate order.

(11) The number of pages in a brief taxable as costs should be limited by rule of court.

(12) The bar and the bench should take steps to see why the oral argument is losing in effectiveness and what may be done to remedy the situation.

(13) The problem of "one-man" decisions on appeal should be made the subject of study by the bench and bar.

(Note: Recommendation 14, which declared that a single appellate court with as many divisions as necessary was the most satisfactory method of handling appeals except in the federal courts and certain more populous states, was withdrawn and referred to the committee for further study at the meeting of the section in Cleveland.)

(15) An effort should be made to limit opinions to a brief summary of facts and references to controlling cases and statutes where no novel principle or application of law is involved.

(16) Findings of fact should have the same effect on appeal in all cases tried by the court without a jury whether they are cases at law or in equity.

(17) Appellate courts should have the power to enter or order the proper judgment without new trial when the proceedings show as a matter of law what the judgment should be. If error affects only part of a case, the court should have power to order new trial on that part only.

Administrative Tribunals

(1) The Committee on Administrative Agencies and Tribunals, which during the past year has collected much information on this question in the states, should be continued with directions to continue its studies along the lines indicated in its report.

MEMORIAL TO JUSTICE CARDOZO

Read by Hon. Edward R. Finch

BENJAMIN NATHAN CARDOZO was born in New York City on May 24th, 1870. At the age of nineteen, he graduated from Columbia College with high honors. A youth of frail physique and of reserved manner and spirit, he had little part in the sports or social life of the college; yet, during his whole life, the men who were in college with him gave him their admiring affection. A student of literature and philosophy, a lover of the classics, he showed even in those early days that his deepest interest was in contemporary thought and, especially, in contemporary political and governmental activities. It is significant that for the subject of his commencement oration he chose "The Altruist in Politics" and for the subject of his bachelor's thesis he chose "Communism."

The youthful Cardozo studied for two years at the Columbia Law School and then began the practice of law. He tried no sensational cases. He disdained deception and even lack of candor. He would not appeal to the passions or prejudices of a jury. The trickster, rich or poor, could obtain no aid or comfort from him. He was unfitted for any struggle where scrupulous integrity and a fine sense of what is right might be a handicap; but judges felt the persuasive force of his legal arguments and lawyers and laymen sought his counsel and assistance in the solution of intricate legal problems.

In 1913, though he was an independent Democrat who had never been active in politics and was known only to the members of his own profession, he was nominated by a Fusion group and elected a justice of the Supreme Court of New York. In the campaign he had received the enthusiastic support of the leaders of the bar and, as soon as he was elected, some of them urged Governor Glynn to designate him to serve temporarily as an Associate Judge of the Court of Appeals. In spite of Cardozo's lack of judicial experience, the designation was made and it was received by the bench and bar with general approval. Ten years later Governor Glynn told me that he was prouder of that designation than of any other act of his career.

Governor Glynn had good reason for that pride; for he gave to the State of New York and, indeed, to the English speaking world, one of the greatest appellate judges of all time. In January, 1917, Cardozo was appointed a regular member of the court by Governor Whitman and, in the following November he was elected to that position for a term of fourteen years, upon the nomination of both major parties. In 1926, upon similar nomination, he was elected Chief Judge of the court. In 1932 he was appointed by President Hoover Justice of the Supreme Court of the United States. He did not seek the appointment. Those who knew his work demanded it and, when the appointment was made, the whole country acclaimed it. For six years he served in that high position. In no period of its history has that great court been called upon to decide so many cases which were the subject of bitter controversy; in no period have political passions so completely dominated appraisal and criticism of its decisions; but when, on July 9th, 1938, Justice Cardozo passed away, the whole country mourned his loss and paid him tribute, not only in admiration for his work and his character but in affection for his great spirit.

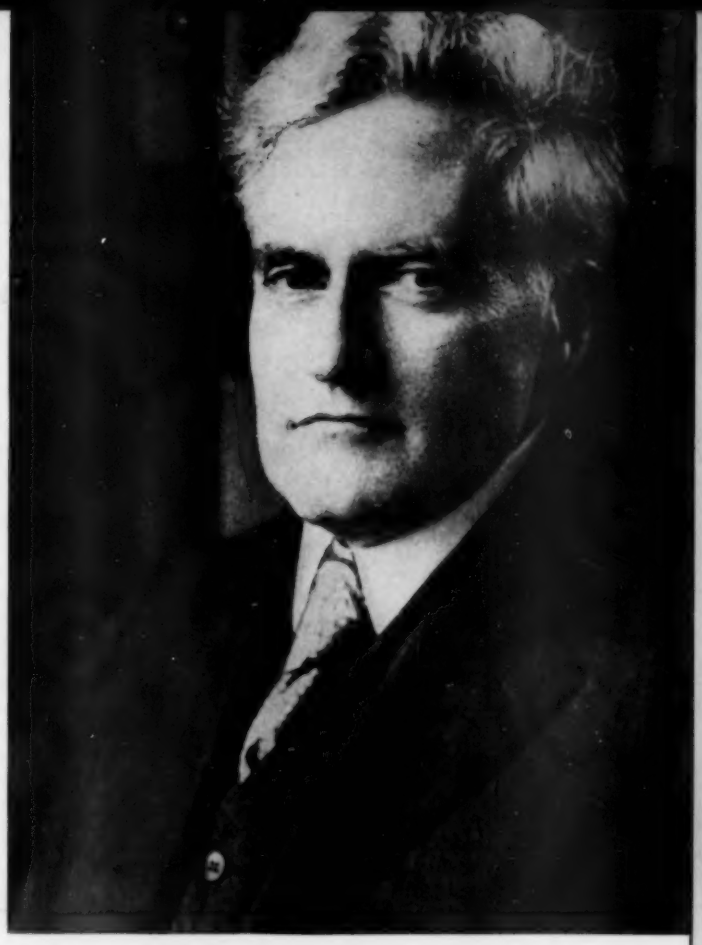
There is little of drama in this brief record of Justice Cardozo's life. It was a life of fruitful thought and study, not of manifold activities. Quiet, gentle and reserved, from boyhood till death, he walked steadily along the path of reason, seeking the goal of truth; and none could lure him from that path. I had the privilege of close association with him in the work of the Court of Appeals and at home. I loved him, but so did all who knew him well. I realized that in truth he was the Master who was bringing new methods and new ideas into judicial decisions. I felt the influence of his great soul and mind, but so did many others. The significance of the record of his life lies in the fact that in youth at college and in manhood, as a lawyer and as a judge, in work of ever widening importance he gathered an ever-widening circle of friends—an ever-increasing influence in the development of the law and in the administration of justice.

His work as a judge and legal scholar falls naturally into two periods: while he was in the Court of Appeals and while he was in the Supreme Court. Cases brought to the Court of Appeals present a wide range of legal problems. Questions of constitutional law and of government engross the attention of the judges less than problems of tort or contract which must be solved by the application of common law principles. In that court, Judge Cardozo developed his method of approach to such problems. In that court, too, he found some associates with spirit and mind akin to his own and there he wielded an influence which made that court great. I became a judge of that court on January 1st, 1924, long after his influence was manifest and the reputation of the court firmly established. I had known Judge Cardozo well for many years. I had often discussed legal problems with him; but in the work of the court I could see more clearly the qualities which made Judge Cardozo a great judge and which contributed to his wide influence.

What were these qualities? I would place first the honesty and integrity of his mind. He was not content to arrive at a conclusion by traditional methods of legal reasoning nor to justify, by rationalization, a conclusion dictated by impulse or even by social philosophy. He was not content to accept an unjust decision merely because it rested firmly on old precedents nor was he content to cast aside lightly long accepted rules and precedents merely because they dictated a conclusion which might be unfair to a particular litigant. He sought to know his own mind; to trace the influence which led him to choose one course rather than another; to appraise the value of conflicting considerations of logic and of history, of custom and of morality, of certainty and of flexibility, of form and of substance.

In his lecture on "The Nature of the Judicial Process," delivered in 1921 before the Law School of Yale University, and in supplementary lectures

*This memorial was prepared by Judge Irving Lehman of New York City.



and addresses, Judge Cardozo set forth his thoughts on these subjects in a manner which constrained other judges to give thought to matters where previously there had been blind acceptance. He knew what students of legal philosophy had written, especially in the universities of continental Europe. He read and he absorbed; but the formulation of the problem and the solution which must satisfy him were based almost entirely upon his own experience and his study of the opinions and decisions of the great judges of England and America, and, above all, of Justice Holmes, for whom he had an almost reverential admiration.

The common law rests upon judicial precedents and Judge Cardozo was too wise and too conservative to reject ancient precedents as long as they could serve modern needs. "Certainty and regularity," he said, "have at least a presumption in their favor. They show us the well worn ways, and as in conduct generally so in law, what we have done in the past we are likely to continue to do till the shock of a perturbing force is strong enough to jolt us out of the rut." (Address before the State Bar Association.)

Nevertheless, Judge Cardozo was too sound a realist and too liberal in his social outlook to follow an ancient rule after the reason for the rule had disappeared. He recognized that no old, judge-made rule can long survive which is out of harmony with the thoughts and the customs of a democratic people. So a balance must be found which will permit progress—but progress along a road where the great traditions of the common law still serve as guide posts. "You shall not for some slight profit of convenience or utility depart from standards set by history or logic; the loss will be greater than the gain. You shall not drag in the dust the standards set by equity and justice to win some slight conformity to symmetry and order; the gain will be unequal to the loss."

When an old rule was challenged, Judge Cardozo read it over and over again in the light of what students of the law had thought and written about it. "More and more," he said, "we are looking to the scholar in his study, to the jurist rather than to the judge or lawyer, for inspiration and guidance." Small wonder that when, in the conferences of the court, he discussed legal problems with the mental clarity and the great learning which were at his command, his words often swayed the decision of the judges. Small wonder, too, that after his opinions were written in language, perhaps, more harmonious and persuasive than any other judicial opinions in the English language, lawyers and laymen were convinced and accepted the result with acclaim. Small wonder that the students of the law, the specialists in every branch of the law, have hailed Judge Cardozo as a great pathfinder in the progressive development of law.

When Justice Holmes resigned from the Supreme Court of the United States there was general recognition that Judge Cardozo, beyond all others, was fitted to be his successor. The admiration which Judge Cardozo had for Justice Holmes was returned in full measure by Holmes. Each saw in the other a spiritual brother. Holmes did not regret that age had forced him to lay down the pen which he had used for so many years with trenchant force, when he knew that Cardozo would take it up and use it in the same spirit and with equal force. It was a source of abiding satisfaction and pride to Cardozo that Holmes had long hoped that he would succeed him; but Cardozo was so modest that he never ceased to wonder that those who had revered Holmes were sure that as a man, as a scholar and as a jurist Cardozo was his worthy successor.

The work of Justice Cardozo upon the Supreme Court is so recent, the decisions in which he took part so momentous, that every lawyer has read, I am sure, each opinion written by him for the court or to give expression to his dissenting views. Some cases called for the appraisal of such conflicting considerations and the decision might have such important consequences upon the future of the country that Justice Cardozo arrived at his own conclusions with anguish of soul. Each member of this association has doubtless formed his own judgment as to the soundness of these conclusions, but lawyers and laymen, regardless of their social and political bias, agree that in each opinion certain guiding principles can be tracel which dictated the concluson. Justice Cardozo felt profoundly that America is great, not because of its wealth and power but because embodied in its constitution are the ideals of liberty and democracy which have become part of the spirit of America. The constitution, he believed, if properly interpreted, would conserve these ideals without blocking the road of progress. As a justice of the Supreme Court he

consecrated himself to the task of finding the right interpretation.

I shall not discuss here Justice Cardozo's views on constitutional law or analyze the decisions in which he had part. In Helvering vs. Davis at 301 U. S. 619 he said: "Needs that were narrow or parochial a century ago may be interwoven in our day with the well being of the nation. What is critical or urgent changes with the times." Always Justice Cardozo earnestly sought in the language of the constitution a grant of power to the national government sufficient to provide for needs which are critical and urgent and are interwoven with the well being of the nation.

It is difficult for me, as a friend, to speak publicly of Justice Cardozo as a man rather than as a judge. A man of fastidious reticence he guarded jealously his personal privacy. He would be distressed if what he disclosed to a friend were exhibited to the world; and yet the life and work of Justice Cardozo can be appraised properly and his influence explained only by those who knew the purity of his soul and the sweetness and strength of his character. Many have found his mental ability remarkable. His friends know that the beauty of his character, his selfless devotion to his work, his firm adherence to principle and, may I add, his love for his friends and his perfect charity to all men was far more remarkable.

His ancestors were driven from the Spanish peninsula more than four hundred years ago because they would not abandon the faith of their fathers. They found a home in New York while it was still a colony of Great Britain. They fought for its independence; they cherished its ideals. The same spirit which impelled Justice Cardozo's ancestors to hold fast to their faith and their principles, though it made them homeless outcasts, animated Justice Cardozo. He could see the force of arguments, though he rejected them. He could compromise in matters where there might be difference of opinion among reasonable men, and where no great principle was involved. He could not compromise in a matter of principle; he could not abandon his standard of what is right; he could not reject what he believed to be true. He loved his country with a surpassing love. The honors paid to him gave him added joy because they showed to him, a Jew, and to all the world that America does not withhold from any of her sons because of creed or race the meed of love or praise which he has earned.

In his heart there was love so great that it excluded all other feelings. Shy and retiring though he was, he found his greatest happiness in intercourse with men and women and in the companionship of his friends. The great legal thinker was at all times and under all circumstances the gentle, modest, loving man.

Not long ago he expressed to a friend the thought that James Russell Lowell's lines on Agassiz were the finest compliment that could be paid to any man. Never was there a man whom they fitted better than Justice Cardozo:

"His magic was not far to seek,—
He was so human! Whether strong or weak
Far from his kind he neither sank nor soared,
But sate an equal guest at every board.
No beggar ever felt him condescend,
No prince presume; for still himself he bare,
At manhood's simple level, and wher'er
He met a stranger, there he left a friend."

Some Convictions as to Legal Education

(*Continued from page* 718)

opment, this new function of the law school professor, fully as important as teaching and research, carries with it correspondingly greater obligations to society. Must he not avoid the exhibitionism which has characterized too many of our so-called publicists? Must he not refrain from talking with his tongue in his cheek and his eye on page one, column one, of the daily newspaper? Must he not remember that he has a freedom greater than that accorded to either judge or advocate, and that that freedom obligates him above all others to dedicate his thought and utterances to the truth and the truth alone? And in order that he may be prepared to cooperate with the bar in law reform or with the agencies of government in meeting new and unusual situations, should he not familiarize himself with the actual problems of the practicing lawyer by devoting his years of sabbatical leave to the actual practice of the law? In these days of constant change and of complicated conflicts in social interest, are not these problems with reference to the qualifications of law school professors among the most important that may engage the attention of the Section of Legal Education and Admissions to the Bar?

I have just been discussing informally with my friends of the Section of Municipal Law a matter very closely related to this last topic of mine. As our administrative agencies in the nation and in the states develop, must not adequately trained men be provided to man them? Must not these men be trained not only in law and in government, but in the special disciplines of the agency they are administering? Is not the profession of public service obviously developing? Is it not to be the fourth branch of the profession, perhaps the most important of all? And, finally, should not this Section be giving some thought to this new field of legal education, where we may hope to train leaders to guide our administrative agencies forward, at the same time avoiding the mistakes of the past? I have a conviction that this will some day be the most important function of this Section of Legal Education.

There are some who think this Section has accomplished its purposes. If my remarks have served no other purpose, they should at least help to dispel any such notion. Important as the accomplishments of the past have been, I am convinced that the Section's most significant work still lies in the future.

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The JOURNAL is prepared to furnish a neat and serviceable binder for current numbers to members for $1.50. The price is merely manufacturer's cost plus expense of packing, mailing, insurance, etc. The binder has back of art buckram, with the name "American Bar Association Journal" stamped on it in gilt letters. Please send check with order to JOURNAL Office, 1140 N. Dearborn St., Chicago, Ill.

MEMORIAL TO FRANK B. KELLOGG

Read by Hon. Silas H. Strawn

FRANK BILLINGS KELLOGG, the thirty-fifth President of the American Bar Association, was born at Potsdam, New York, December 22, 1856, and died at his home in St. Paul, Minnesota, on the evening before his 81st birthday.

For more than half a century, as a leader of the bar, United States Senator, Ambassador to the Court of St. James, Secretary of State, author of the Kellogg-Briand Peace Pact, Judge of the Permanent Court of International Justice and a member of several diplomatic commissions, he was a prominent actor in making the history of his time.

At the age of 9, in 1865, he traveled with his family, sometimes by wagon, sometimes by water, sometimes by rail and sometimes on foot, from his birthplace in New York to a far-off frontier farm near Elgin in Olmstead County, Minnesota.

His educational opportunities were limited, but he availed himself of such as there were and supplemented what he learned in school by assiduous reading and study, resulting in his ultimately being recognized as a man of liberal education and versatile attainments.

While he frequently referred to his lack of what he called "a proper education," he differed from some other self-made men in that he regarded an education as never complete.

He held honorary degrees from fifteen universities and colleges, including McGill at Montreal and Oxford in England. He was an Honorary Bencher of the Middle Temple in London, was decorated with the Grand Cross, Legion of Honor in France, awarded the Nobel Peace Prize in 1929, made a member of the Order of Olive Branch in Argentina in 1930, given the Gold Medal of the National Institute of Social Science, and was the recipient of the Cardinal Newman Award of the Newman Foundation of the University of Illinois. His latest decoration was that of the White Grand Cordon of the Order of Jade, China, in 1936.

He was admitted to the bar at the age of 21. Having demonstrated unusual ability in important litigation, at the age of 30, in 1887, he was invited to become a member of the leading St. Paul law firm of Davis, Kellogg and Severance.

Although Mr. Kellogg was counsel for vast corporate interests, he was drafted by President Theodore Roosevelt to prosecute some of the alleged violations of the Sherman Act. This he did with commendable success.

His underlying philosophy was expressed in an article in the REVIEW OF REVIEWS for June, 1912:

"In my opinion, it is not and should not be the desire of the American people to destroy any industry, but to control it; not to destroy capital, but to regulate it, for large aggregations of capital are necessary to many branches of business. But wealth is one of the greatest powers known in the world. It should be controlled so that it will not be used to the injury of the people. The highest development of civilization will be attained by keeping open to individual enterprise the great avenues of commerce and industry, so that every man, with reasonable capital, ability and industry, may safely embark in some branches of industry with the hope of being something more than the employee of a corporation."

The members of the American Bar Association who attended the meeting in London in 1924, when Mr. Kellogg was our Ambassador to the Court of St. James, well remember the magnificent reception given by the Ambassador and his gracious wife at Crewe House.

The career of Frank Kellogg was one of remarkable achievement. His outstanding characteristic was the determination to succeed in everything he undertook.

The members of the American Bar Association in convention assembled record the loss sustained in the passing of this lawyer, statesman, diplomat and great American.

MEMORIAL TO NEWTON D. BAKER*

Read by Hon. W. Calvin Chesnut

IT IS altogether fitting that a memorial to Newton D. Baker, as an outstanding lawyer of national fame, should be submitted to this Annual Convention of the American Bar Association held here in Cleveland a few months after his death on Christmas Day, 1937. Here he came, at the turn of the century, endowed only with his academic and legal degrees, a few law books and his intrinsic intellectual and moral qualities. Almost at once he became a conspicuous figure in the legal, political and civic life of this great City. From 1902 to 1912 he served it faithfully and efficiently, first as Assistant and then as its Chief law officer and for four years thereafter as its Mayor. In 1916 he went from here to Washington to serve the Nation as Secretary of War for five years, and here he returned in 1921 to continue the City as his home and the central location for his large national practice of law.

Today we honor his memory particularly as a lawyer who for many years was an active and influential member of this Association; but no memorial to him could properly omit some very brief mention of his invaluable services to the Nation during the period of its greatest military effort. A lasting record of his truly great administrative achievements as Secretary of War has been made by Col. Frederick Palmer's two-volume book on "Newton D. Baker." In the emergency of the World War, he demonstrated his ability to organize and administer vast activities, to command loyalty from and inspire confidence in his associates, and to make prompt and wise decisions. And in an extended and scholarly article in the magazine of "Foreign Affairs" for October, 1936, he has made a most valuable contribution to our national history as to "Why We Went to War."

Viewing his life as a whole, his conspicuous national services as Secretary of War should not be allowed to overshadow his distinguished non-military services in the fields of municipal reform and administration; in general education; in the art of public speaking; and in his chief activity, the practice of the law. In all these fields, his wide and deep interests and his constant activities brought to him a well deserved national fame. As an alumnus and trustee of the Johns Hopkins University in Baltimore and as a trustee of the Western Reserve University of this City, he had for many years a most active part to play in the administration of two great institutions of learning. His conspicuous eminence in the fields of education, statesmanship, and many other phases of public welfare, were recognized and honored by many institutions of learning, including Yale, by conferring upon him the degree of LL.D. His experiences as Secretary of War for five years acquainted him in a very exceptional degree with international relations and the causes that lead to war, and in many public addresses he strongly urged the removal or abatement of the causes of international conflict. He rightly regarded the Institute of Pacific Relations, of which he was long an important officer, as a helpful agency to avert war.

In consequence of his leadership in these many fields of public interest in which he played such an active and conspicuous part, it is plain that Newton D. Baker will always have a place as one of the truly great figures in American public life. But the permanence of his memory will rest not only upon his achievements but also upon the qualities of mind and character which distinguished them. He was endowed by nature with mental and moral qualities of the highest order. He had the understanding of great intelligence, cultivated by wide reading and enlightened by deep human sympathy. He was one of the most effective public speakers of his generation, both to personal auditors and radio listeners. He had the ability to translate thought into speech of transfiguring power and beauty. With a large vocabulary he had an unerringly happy discrimination in the choice of words. He was a happy and ready extemporaneous speaker. His able and devoted secretary during the War, Ralph Hayes, has collected many of his public addresses in his book entitled "Frontiers of Freedom," which so clearly demonstrates his extensive human sympathies and interests, and reveals to us something of his deep culture and philosophy of life. In his moments of relaxation he was an intelligent admirer of good music, his discriminating taste for which had been sharpened and deepened by his gifted wife and brother-in-law.

To us as lawyers the life of Newton D. Baker holds an especial significance. In his early professional career, in the office of the City Solicitor of Cleveland, he made a profound impression upon this City as a lawyer of outstanding ability. On his retirement from public life after a continuous service of twenty years, during which his private practice was necessarily greatly neglected if not practically abandoned, he returned to Cleveland from Washington in 1921, and resumed active legal practice and soon became known as one of the leading lawyers of the United States. He had deep understanding of the fundamental principles of our law, particularly in the field of constitutional law, which he has revealed to some extent in his little treatise entitled "Progress and the Constitution." As a sincere disciple of Thomas Jefferson, he had an abiding conviction in the great wsdom of the Federal Bill of Rights and particularly in the First Amendment guaranteeing to citizens freedom of speech, of the press, and of religious liberty.

While almost constantly engaged in the litigation of legal cases of great importance and significance in many courts, both federal and state, he nevertheless found time to render disinterested service in the progress of substantive law and legal procedure. Not only was he an active and influ-

*This memorial to Mr. Baker was prepared by Mr. Joseph C. Hostetler, of Cleveland, O., and Judge W. Calvin Chesnut of Baltimore in collaboration. Mr. Hostetler was a partner of Mr. Baker in the law firm at Cleveland and Judge Chesnut was an old schoolmate and a life-long friend.

ential member of this Association, but for years, and until his death, he was president of the American Judicature Society. He was a firm believer in the vital importance of an independent judiciary. His position in our profession was recognized by President Coolidge in appointing him as a member of the Permanent Court of Arbitration at The Hague in 1928; and by his appointment by President Hoover as a member of the Law Enforcement Commission of 1929. Throughout his life and in a period of many changes he represented the best traditions and the highest ideals of our profession. Year by year the appreciation of his character and wisdom and the influence of his example have grown. It is with love and great respect that we acknowledge our indebtedness to one whose memory so honors the profession of the law.

I am privileged to add a personal word about Newton D. Baker as a friend. He had many intimate and devoted friends; and it was one of his particular characteristics that the friends of his youth remained the friends of his maturity. He was my most intimate and beloved friend for nearly fifty years. Our first acquaintance was when we entered the academic department of the Johns Hopkins University in the Class of 1892. We joined the same college fraternity; were contemporary students of the law, and after the years of college life we were frequent visitors in each other's homes, and constant correspondents. As youths we dreamed our dreams together and contrasted our philosophies of life, as young men do, in long conversations. I learned to know very thoroughly his qualities of mind and heart. From earliest life his ideal was public service. It was a personal joy to me and to his host of friends both young and old to know that his dreams came true and that it has been authoritatively said of him: "He was the ideal public servant."

Comment on the Assembly Sessions in Cleveland

(Contributed)

The attendance of members of the Association and other lawyers at sessions of the Assembly was notably large at the opening session and on Wednesday forenoon and evening. Notable addresses or the transaction of business of active general interest bring to Assembly sessions a large attendance by the members present at the convention. On the other hand, the experience in Cleveland showed that, especially if the weather is uncomfortable, the members of the Association will not come to Assembly sessions in large numbers to hear and act upon committee reports in which there is little or no militant general interest, even though such reports be of substantial importance.

When the program as made for the Assembly in Cleveland reached this character, the casual attendance in the hall was little, if any, larger than in the old general meetings of the Association, prior to 1936, and the action taken in the Assembly under such circumstances could hardly be accepted as representative of the 31,000 members of the Association. However, the actions of the Assembly do not become the actions of the Association unless concurred in by the representative House of Delegates or adopted by a referendum vote of the Association membership. Future program-builders are likely to heed the experience gained in Boston and Kansas City that large attendance at sessions of the Assembly can be secured only if outstanding events are scheduled for the Assembly. Otherwise, the large attendance at annual meetings will be sparingly represented in the convention hall of the Assembly, as it was in the general meetings prior to 1936. The building of programs designed to bring out large attendance at all sessions of the Assembly is likely to follow from the experience at one or two sessions in Cleveland. This year the large number of lawyers present in Cleveland seemed to turn instinctively to the opportunities afforded them for practical instruction in matters which will be of assistance to them in their professional work. The "open forum" session on resolutions remained as the intended "safety-valve" to prevent anyone from being foreclosed, but not as a great magnet for general attendance in competition with other attractions offered.

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JOSEPH R. TAYLOR
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A MEETING OF MEN—AND MINDS

The 1938 Annual Meeting of the American Bar Association is now a part of the history of the organized Bar of America. An account of the proceedings of the Assembly and the House is published in this issue of the Journal. Many of the principal addresses were in the August issue; others appear in this issue, or will be in subsequent issues or the Annual Report volume.

The recorded accomplishments of the meeting speak for themselves. Viewed as an annual session of a legislative body which comes together for no more than a week, the volume of matters considered and advanced is most impressive. The Annual Meeting has no power to impose its determinations on State or local Bar Associations or on anyone else. They go as recommendations to help form the great body of reasoned public opinion; they stand only upon whatever merits they are found to have; for them there is no greater authority or force.

It was more than a meeting of men—it was a meeting of minds in the broadest sense. Rarely has such unity of purpose and action been shown at a meeting of the Association. A great constructive program for procedural reform went to the country with the practically unanimous support of members. In other directions the same concert of thought and feeling was manifest. To judge from the Cleveland meeting, one would say that the title of President Vanderbilt's address, "United We Stand," was not so much a plea as a statement of accomplished fact.

It was a working meeting also. The summary of things done, printed elsewhere in this issue, sufficiently attests this. Careful consideration was given to the numerous questions presented in committee and section reports. Steps were taken to make sure that consideration should be real and not merely formal, and that the seal of the Association's approval should always mean what it purported to mean. The House of Delegates established itself as a "shirtsleeves" body. It got down to business and stayed there to the end.

It was a constructive meeting in more than one sense. The summary just referred to will enable the reader to see what was done and to make his own evaluation. But there is little doubt that he will realize that the meeting did its part, and a great part at that, toward improving the administration of Justice, and toward restoring to the old phrase, "the rights of man," the freshness and the meaning needed to counteract certain tendencies which are beginning to manifest themselves in our country.

It was constructive in another and unique sense, as far as Annual Meetings go. The two teaching Institutes held at Cleveland answered an increased demand from lawyers for means of keeping informed of important developments in special fields. It was surprising enough to see the attendance at the Institute on the New Rules of Civil Procedure. But it was nothing less than startling, several days later, to see lawyers for three long sessions crowd into a room to hear lectures on powers of appointment and the rule against perpetuities. We may be sure that the lesson learned at Cleveland will not be forgotten in future programs.

It was a forward looking meeting, too. The gaze was all in the direction of clearly defined objectives and the dominant mood was one of action. There is more than a suggestion of marching minds in the sum total of accomplishments at Cleveland. And there is a broader outlook, an acceptance of wider social responsibilities—and this without impairing the purpose to center attention largely on concrete methods of improving the administration of Justice. Creation of the Special Committee on Defense of Liberties Vouchsafed by the Bill of Rights shows that the Bar realizes that the defense of one man may be the defense of all.

The agreeable visit of our distinguished guests from England, from Canada, and

from all three branches of the government of the United States, made this Annual Meeting honored and memorable. The leadership of President Vanderbilt was manifest in many fields. The geniality and hospitality of our Cleveland hosts led us to hope that, long before another twenty years have passed, an invitation from Cleveland and from Ohio will again be extended and accepted.

CONCERN FOR THE RIGHTS OF OTHERS

President Hogan has made immediate use of the authority voted him by the House of Delegates in Cleveland, for the appointment of a committee to cooperate with local and State Bar Associations in behalf of the maintenance of liberties vouchsafed to persons by the Bill of Rights. The representative membership of this vital new committee is announced elsewhere in this issue. Appropriately it is headed by Mr. Grenville Clark, of New York, who lately has sounded a clarion call to his brethren of the Bar to join in performance of their public duty to defend the rights of citizens; and the roster of the Committee includes several lawyers who will be recognized as gallant defenders of the public right, in earlier struggles for free speech, free press, freedom of worship and assembly, and the inviolability of homes and papers.

Although the creation of such an instrumentality of the American Bar Association had been urged from time to time for many years, by Mr. Hogan and others, the actual fruition of the project had its origin, as should be, in the action and the wishes of numerous local Bar Associations. When these organizations created committees and began work in defense of the Bill of Rights, their need for national leadership and some measure of assistance and guidance was promptly and properly heeded by the House of Delegates. As in many other activities, the committee of the American Bar Association can at least act as clearing house and adviser for the State and local Associations and can help toward some coordination and consistency of efforts in a field in which local conditions and points of view will naturally be taken into account.

Concern for the rights and interests of his clients is the characteristic of the individual lawyer, by long tradition. Concern for the rights of such of the public as never become clients may be increasingly a concern of lawyers collectively, through the instrumentalities of the organized Bar. Mr. Grenville Clark is clearly right in his contention that the defense of the rights of citizens which would otherwise go undefended is peculiarly the duty and prerogative of conservative lawyers, if the rights of anyone and the integrity of constitutional guaranties are to be conserved at all.

Whatever is undertaken and done by Bar Associations in this field will be in the spirit expressed more than a century ago by one of the greatest of American lawyers, when Abraham Lincoln, at Springfield, Illinois, on January 27, 1837, gave a warning which cannot be repeated too often to succeeding generations:

> "I know the American people are much attached to their government; I know they would suffer much for its sake; I know they would endure evils long and patiently before they would ever think of exchanging it for another—yet, notwithstanding all this, if the laws be continually despised and disregarded, if their rights to be secure in their persons and property are held by no better tenure than the caprice of a mob, the alienation of their affections from the government is the natural consequence; and to that, sooner or later, it must come.
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> "Here then is one point at which danger may be expected. The question recurs, How shall we fortify against it? The answer is simple. Let every American, every lover of liberty, every well-wisher to his posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country, and never to tolerate their violation by others. As the patriots of '76 did to the support of the Declaration of Independence, so to the support of the Constitution and laws let every American pledge his life, his property and his sacred honor—let every man remember that to violate the law is to trample on the blood of his father and to tear the charter of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries and in colleges; let it be written in primers, spelling books and in almanacs; let it be preached from the pulpit, proclaimed in legislative halls and enforced in courts of justice. And in short, let it become the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions, sacrifice unceasingly upon its altars."

The organized lawyers of America could ill afford to acquiesce in a disregard or flouting, as to the humblest citizen, of rights vouchsafed to him by the Bill of Rights. The venture of the American Bar Association into this field is in competent hands and will not lack awareness of the difficulties. It is likely to help in the right direction.

WESTERN RESERVE UNIVERSITY Confers HONORARY DEGREES

THE Annual Meeting at Cleveland was made the occasion for special recognition of two distinguished members of the profession. Honorary degrees were conferred by Western Reserve University in a special convocation Thursday upon Arthur T. Vanderbilt, President of the American Bar Association, and the Association's guest of honor, Lord Macmillan.

Mr. Vanderbilt was presented for his degree by Prof. Fletcher Reed Andrews and Lord Macmillan by Prof. John F. Oberlin, both of the Western Reserve School of Law. Honors were conferred by President Winfred G. Leutner of Reserve.

The convocation address was delivered by Hon. John J. Parker, Senior Judge of the United States Circuit Court of Appeals for the Fourth Circuit.

In presenting Mr. Vanderbilt for the degree of Doctor of Laws, Professor Andrews gave a sketch of his career, and on conferring the degree President Leutner read the following citation:

"Arthur T. Vanderbilt; learned advocate; distinguished teacher of the law; a recognized leader among American men of law; honored by your professional colleagues with the Presidency of the American Bar Association; in recognition of your learning and your forthright leadership, on recommendation of the University faculty and by vote of the Board of Trustees, I do now as president of Western Reserve University admit you to the honorary degree of Doctor of Laws with such rights and privileges as pertain to this degree. In token of this act we bestow upon you the hood of this University and grant you its diploma."

Lord Macmillan was presented for the degree of Doctor of Civil Laws. Professor Oberlin gave the high lights of his distinguished career, and President Leutner, in conferring the degree, read the following citation:

"Hugh Pattison, The Right Honorable Lord Macmillan of Aberfeldy; distinguished son of Scotland whose rich talents have been contributed to his native land, to England, to the Empire, to the Dominions and to countries outside the Empire; honored many times by your country and government with responsibility for leadership in national commissions and trusteeships, and by institutions and societies in your own and other lands for your great learning, your broad interests and your sense of justice; honorary member of the American and Canadian Bar Associations and of the Brazilian and Uruguayan Bars; on recommendation of the University faculty and by the vote of the Board of Trustees, I do now as president of Western Reserve University admit you to the honorary degree of Doctor of Civil Laws with such rights and privileges as pertain to this degree. In token of this act we bestow upon you the hood of the University and grant you its diploma."

Judge Parker's convocation address was as follows:

"We are met this afternoon that one of the great universities of America may honor two outstanding members of the legal profession of England and of the United States, one a great English Judge, the other the President of the Bar Association of our own country—both of them men who have won distinction as teachers of law as well as in the active work of the profession. On such an occasion it seems fitting that we should think for a little while of the great democratic ideal of government which binds the English-speaking peoples together as much as any other thing in their common heritage, and the preservation of which, in this period of change and unrest, is the peculiar duty of the legal profession and of our institutions of learning.

"Twenty years ago England and America were engaged in a great war, the winning of which they thought would make the world safe for democracy. They won the war; but, twenty years after, democracy is not only not safe, but is in graver danger than at any time in the last hundred years. In country after country it has been repudiated; and over the greater part of the earth's surface some form of despotism has been established. Not only is this true, but in the great democracies themselves we are beginning to hear preached the false philosophies which have subverted the liberties of so many of the nations of Europe and of South America. We have on the one hand, the communists, who prating of economic justice, would crush the liberty of the individual beneath a system of state slavery, on the other hand, the fascists who in the name of efficiency and order would crush that liberty beneath some form of dictatorship. The great danger to democracy lies, not in the power of hostile foreign nations, but in these false philosophies, which would destroy freedom for the regimentation of the totalitarian state.

"The danger to democracy presented by these false philosophies has become a serious matter, partly because of widespread failure to understand the real principles of democracy, partly because of failure to reinterpret these principles in terms of laws and standards to meet the changed conditions of the complex age in which we are living. Democracy as applied to government means a great deal more than majority rule. That is but one of its techniques. Democracy means the recognition of the rights of the individual in the life of the institution; and, as applied to government, it involves three principles: (1) the protection of the rights of the individual against the power of the state; (2) popular sovereignty, or the right of the people to govern themselves in matters of social concern; and (3) the supremacy of law based upon reason and justice. These principles are in no sense fortuitous or accidental. They inhere in the nature of free government. They must be embodied in laws and institutions to meet the changing needs of the times; but the principles themselves do not change. They are as fundamental as the laws of nature or the laws of mathematics.

"The first of these principles, recognition of the

President's party in Convocation Procession at Western Reserve University, Cleveland, O., July 28, 1938. Left to right in foreground: President, Winfred G. Leutner, Rt. Hon. Lord Macmillan, Hon. John J. Parker, Hon. Arthur T. Vanderbilt, James F. Oberlin, Professor Fletcher R. Andrews, Hon. Carl V. Weygandt, Hon. George S. Meyers. Just behind Mr. Oberlin is Mr. E. H. Coleman (bare-headed) and to right of Mr. Coleman in academic garb is Dean Walter T. Dunmore.

rights of the individual, is no mere theoretical concept. It was attained by our forefathers through centuries of struggle and bloodshed. Freedom of thought, freedom of speech, freedom of conscience—the right to be secure in one's home and one's person from unreasonable exercise of power on the part of government—the right of public trial and to be confronted by accusing witnesses—the right to immediate judicial inquiry into any imprisonment—the right not to be deprived of life or liberty or property but by the law of the land, the general law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial—these and other rights which it is unnecessary to enumerate, rights founded upon Magna Carta, the petition of right, the bill of rights and the other great monuments of liberty, are so firmly embedded in the polity of our peoples that we think of them as natural and inalienable. When we founded our government here and looked to the people rather than to a king as the source of sovereign power, we guaranteed them in our fundamental law, not merely against the power of the executive, but against the entire power of the state; so that no public official, no legislative assembly, no popular majority might deny them to any man however poor, or humble or unpopular he might be. This guaranty was, I think, America's greatest contribution to the science of government. Its place among our English brethren is supplied by the unquestioned acceptance by the people of the same principles embedded in the unwritten constitution of that country.

"The preservation of democracy necessarily involves the preservation of those fundamental rights of the individual; but we must remember that the individual liberty which democracy envisages is liberty under law, not mere freedom from restraint; and it is no violation of the constitutional principle that, with the increasing complexity of our social relationships, the powers of government should be extended into new fields and the freedom of action of the individual proportionately restrained. A business which is perfectly proper in a sparsely settled community may properly be forbidden as a public nuisance in a great city; and a regulation of trade or employment which would be insufferable

among a simple agricultural people may be essential to their general welfare after they have developed industry and commerce on a large scale. The last half century has wrought an industrial and social revolution in the lives and habits of our people. Improved methods of transportation and communication, the invention of labor saving machinery, the adoption of new methods of corporate organization and financing—all of these have brought us face to face with new problems which call for greater regulation of national life by governmental power than the fathers ever dreamed of. Vast aggregations of capital have threatened a monopolization of industry with swollen fortunes for a few and economic serfdom for many. The tools with which labor works have passed into the hands of capital, and laboring men have suffered a loss of the sense of independence and security which was theirs in former days. Organization for the protection of their interests has resulted in industrial conflict, and shifts in industry have resulted in widespread unemployment. The ramifications of economic life have become so complex, that the misfortunes of one group of workers or producers may be the cause of nationwide calamity. Under such circumstances, it is idle to contend that the power of government should not be used for the proper regulation of economic life. Monopolies must be curbed. Unemployment must be relieved. Justice must be secured in the relations of capital and labor. Some measure of economic security must be provided by the state in the form of old age and unemployment insurance for those who are dependent upon industry which has come to have statewide significance. And conditions must be fostered which will provide for the healthy growth of industry and for the just division of the rewards of industry among those who are engaged in it. We must remember that it is unreasonable violation of the rights of the individual which is forbidden to government, not reasonable regulation of matters which have come to be matters of social concern and which affect the life and future of the whole people; and the gravest problem, I think, in the preservation of democracy is so to interpret the principles of individual freedom as to develop proper social controls without destroying the fundamental liberties of the individual. Laissez faire is gone. Regimentation menaces. What is needed is a wise adjustment of the powers of society which will recognize both the rights of society and the rights of the individual. Without such adjustment democracy cannot live.

"The second principle of democracy is that of popular sovereignty, or the right of the people to govern themselves in matters properly within the power of the state. This principle, which we have regarded as axiomatic in America since the foundation of our government, and which is accepted with equal devotion in England, is seriously challenged in almost every other nation on earth. We are told that the people have not the capacity to govern themselves and that to secure efficiency in the public business government must be intrusted to some despot, more or less benevolent, clothed with dictatorial powers. The answer, of course, is that, even if the efficiency argument were sound, human nature is such that if an individual be intrusted with sovereign power, he or his successors will ultimately use it in the interest of themselves or the class which they represent and not in the interest of the people as a whole. But the efficiency argument is not sound. Granted the existence of normal public virtue, history demonstrates the truth of Mr. Jefferson's statement that the people will attend to their own business better than anybody else will attend to it for them. The people have made mistakes, of course; but their mistakes pale into insignificance in comparison with the mistakes of dictators. Their officers may at times be inefficient; but such inefficiency is not to be compared with the inefficiency and corruption that characterize the bureaucracy of a despotism. As Montesquieu has pointed out, government in a democracy rests upon virtue, government in a despotism rests upon fear; and government based on virtue, which ennables, must necessarily be better than government based on fear, which degrades. The world has seen no better or more efficient government than that which has existed in England and America during the period when the people themselves have ruled these countries. I am tired of hearing the admission made that democracy is inefficient. Any government is inefficient when compared with the ideal; but history demonstrates beyond peradventure that judged by any criterion the democracies have in the long run provided better government than the despotisms. If democracy is to be preserved our faith in this fundamental must be restored. We must have faith in the people as the source of sovereign power—faith in their inherent honesty, their ultimate wisdom, their patriotism, their capacity for self control and self sacrifice. On no other basis can democracy endure.

"The third principle of democracy is the supremacy of law, which is the sine qua non of democracy's existence; for it is only through law that the rights of the individual may be protected and the will of the people in governmental matters may be properly expressed. A government of law based upon reason has been the dream of the ages; but it has been difficult of attainment because men have not sufficiently distinguished in their thinking between law and authority. Law, as Cicero tells us, arises out of the nature of things. It is not something imposed upon a people from without, but something which arises from within. Society is not a mere aggregation of individuals. It is an organism. The law is the life principle of that organism. It must be interpreted in terms of rules and these must be enforced by the power of the state; but the source of law is not that power but the life of the state itself, and the source of the rules is not chance or blind force but reason applied to the myriad relationships involved in the life of the state. This is the spirit which breathes through the free institutions of England and of America. It was the spirit which actuated Lord Coke when he made his famous answer to James I: 'When the case ariseth, I shall answer as it becometh a judge to answer,' i.e., in accordance with reason and right and not in accordance with the arbitrary will of any individual though he embody in his person the power of the state.

"Government must rest upon both reason and force. Reason without force leads to anarchy; force without reason to tyranny. And force without reason will ultimately prevail, unless the supremacy of law founded on reason be acknowledged. This is the gravest danger that threatens human freedom. As said by Professor McIlwain of Harvard a few months ago in the magazine 'Foreign Affairs,' and truer now than when he said it:

"'The one great issue that overshadows all others in the distracted world today is the issue between constitutionalism and arbitrary government. The most fundamental difference is not between monarchy and democracy, nor even between capitalism and socialism or communism, tremendous as these differences are. For even in any

socialistic or communistic regime, as now in every bourgeoise democracy, there will be rights to be preserved and protected. Deeper than the problem whether we shall have a capitalistic system or some other enshrined in our law lies the question whether we shall be ruled by law at all, or only by arbitrary will.'

"The supremacy of law has been attained in England and the United States by the division of sovereign power among the three branches of government; and, as Montesquieu has pointed out, this is essential to the preservation of liberty, an opinion concurred in by Sir William Blackstone, and in this country by Washington, Jefferson, Adams, Hamilton and, in fact, all of the founding fathers. It is provided in practically every American constitution, that of Massachusetts giving eloquently the reason for the division: 'To the end that it may be a government of laws and not of men.' The proper regulation of economic life necessitates the creation of administrative boards in which there is of necessity some mingling of the powers of the three departments; but if the supremacy of law with all that it means to democracy is to be maintained, the ultimate separation of governmental powers must be jealously preserved.

"The preservation of these fundamentals of democracy is, as I conceive it, the greatest task which confronts our institutions of learning and the legal profession of our English-speaking peoples. A university, of course, is more than a school for the instruction of youth. It is more even than a great mental reservoir for the preservation of the learning of the past. Its highest function is as an interpreter of truth; and it fulfills this function only as it formulates the age-old principles of truth and right living in terms of standards by which men may safely live. In this age of changing standards, when the fundamental principles of free government are being everywhere challenged, our universities have no more important duty than that of showing the world how the principles of free government may be preserved.

"The same is true of the legal profession. The function of the lawyer is, not merely to apply the rules of law to the settlement of the disputes of his fellow men, but to interpret the law, the life principle of society, in terms of rules and standards by which society may govern itself. 'Democracy can nowhere long endure,' said Newton D. Baker, 'unless there be adequate leadership and unless the people have confidence in their leaders.' In the very nature of the case, it is to the lawyers that the people of a democracy look for leadership in carrying on the life of the state; and the highest duty of the legal profession is to furnish that leadership.

"It is eminently fitting, therefore, that this university on the occasion of the annual meeting of the American Bar Association should recognize the outstanding leadership of these great lawyers who deserve so well of the people of their respective countries. Lord Macmillan has lived up to his belief that 'there is no subject the study of which benefits more than does the law from the liberalizing influence of contact with other spheres of life and knowledge,' and he has brought to the discharge of his duties upon the Appellate Bench of England a profound knowledge of government and philosophy and a deep understanding of the principles of human conduct, as well as the widest learning in the science of the law itself. President Vanderbilt also is a legal scholar; but we think of him chiefly as the man who has acquired a new vision of professional leadership and who is making the American Bar Association a mighty force for improving the administration of justice throughout the United States. No two men are doing more to preserve respect for our free institutions or are more entitled to the grateful consideration of their fellow countrymen. In honoring them, we honor ourselves."

HON. JOHN J. PARKER
Chairman, Section of Judicial Admin.

A Prophet Honored in His Own Country

(From the New Jersey Law Journal)

"Arthur T. Vanderbilt is concluding his term as President of the American Bar Association in a blaze of glory. He has packed his term of office with more hard work, extensive travel and constructive speeches than the average lawyer would consider humanly possible. Covering 70,000 miles around the country during the year, he has addressed every type of legal gathering from national gatherings of experts in the field of administrative law, state bar associations, law schools and county bar associations to committee meetings of the Association and its Junior Bar Conference whenever the work of such committee had particular significance and possibilities. Throughout the year his principal theme has been the improvement of the administration of justice in the United States. An adequate, just and expeditious system of regulating our affairs, he considers at once the greatest bulwark against the tyrannies and despotism that are rampant abroad and show signs of incipiency here, and also the cure for the layman's dissatisfaction with courts and lawyers."

PROCEEDINGS OF ASSEMBLY CONTINUED

(*From page 698*)

mendous controversy on which people are lined up—lawyers, judges and others interested in the subject—according to their predilections; and that is a matter on which, as our Committee goes further in its work (and this is only a progress report we are making), we hope to be able to find some line of differentiation and to make an intelligent report to our section for recommendations when we come back next year.

"I have not mentioned the Federal field at all because we have been working this year in the state field. In the Federal field, the Committee on Administrative Law of the American Bar Association has been doing very intensive work and we did not want to duplicate their efforts, but as we go along with our work into the phase that gets away from finding out what the facts are, into figuring out what is to be recommended as the best means of accomplishing the administration of justice with regard to these tribunals, we hope to be able to coordinate in some way our views as to what should be done in the Federal field with that of what should be done in the states."

Tribute to Judge Hatton W. Sumners

At the conclusion of Chairman Hoyt's report, President Vanderbilt announced that the Board of Governors had passed a recommendation, which would go to the House of Delegates, that the work of the Committee on Judicial Selection and Tenure be turned over to the Section of Judicial Administration. Mr. Finch and others had emphasized the need of proper selection of judges, and it had seemed highly appropriate to consider entrusting the matter to the section. President Vanderbilt continued:

"All of you who were at Kansas City last year recall, I think, with a great deal of appreciation, the speech that was made there on Wednesday evening by Judge Hatton W. Sumners, of Texas, Chairman of the Judiciary Committee of the House of Representatives. Let me say that I have never known any public official who has cooperated more with the officers of the American Bar Association than has Judge Sumners. At various times during the past year, when from one or another uninformed and unenlightened quarter would come a proposal to attack, or to sidetrack, or to sandbag the proposed Federal Court Rules, Judge Sumners was always uniformly helpful, uniformly sagacious in his advice, and we relied entirely upon him, and with the result that Congress closed without any even remote possibility of adverse action on the rules.

"The Program Committee was very anxious to have Judge Sumners here to address us again this year. Unfortunately, he found it necessary to go home to engage in a political campaign. I don't know why they have campaigns down South at the same time they have their bar meetings, but down in Texas they pick July for voting. He wrote me a telegram that he could not get here. He sent this telegram to one of his friends, Judge Thomson, and it reads as follows:

"'Please make Mr. Vanderbilt understand how deeply I appreciate invitation to address Association and regret cannot leave here now. If opportunity afforded, extend greetings to the Association. Wish I might be with you. Thanks.

HATTON W. SUMNERS.'

President Vanderbilt announced that the final order of business of the second Assembly session was the report of the Chairman of the House of Delegates upon matters requiring action by the Assembly. Chairman Morris reported as follows:

"The Chairman of the House begs to report that the proposed amendment to Article II of the Constitution, which appears on page 271 of the Advance Reports, proposing that the Territory of Puerto Rico be given the status of the Territory of Hawaii and of a state, for the purposes of a seat in the House of Delegates and the election of State Delegates, has been approved by the House.

"The proposal which appears on page 272, of the Advance Report, to the effect that the term of sitting State Delegates shall expire with this meeting, and thereafter the term of the State Delegates shall expire at the end of each meeting, was adopted by the House.

"The proposal with respect to Article I, Section 1 of the By-Laws, and an amendment to Article X, Section 1, of the By-Laws, which would clarify the function of the Committee on Admissions and a Committee on Membership for each jurisdiction, as set out on page 274 of the Advance Reports, was adopted by the House.

"The amendment of the By-Laws, Article X, proposing that the Committee on Legal Publications and Law Reporting be made a standing committee instead of a special committee, was rejected by the House.

"The proposal on page 275 of the Advance Reports of the Honorable Harry P. Lawther, of Texas, to amend Article VIII of the Constitution with respect to the nomination of officers and governors, proposing that these nominations be all made in the House of Delegates at its annual meeting, was rejected by the House.

"The proposal of the Honorable George B. Harris, of Ohio, to amend Article VIII of the Constitution, which appears on pages 275 to 277 inclusive of the Advance Reports, and which would have nominations for the Board of Governors and the officers of the Association made by petition filed by members of the Association, was rejected by the House.

"Any action which the Assembly wishes to take upon these proposed amendments to the Constitution and By-Laws will be open for consideration tomorrow morning when the Assembly meets."

The meeting thereupon adjourned.

Third Session of Assembly Hears Lord Macmillan Speak on "Education for the Law"—Message of Good Will from the Lord Chancellor—A Pretty Incident Is Staged

THIS is one of the gala nights of the meeting. A large audience fills the Music Hall to hear Lord Macmillan speak on "Education for the Law." President Vanderbilt introduces the distinguished guest in a personal vein which humanizes the great judge at once to those who had not heard him on his previous visit as an honored guest of the Association. By way of introduction Lord Macmillan reads a message from the Lord Chancellor conveying his good wishes to the members of the Association, which is applauded. The scholarly address is listened to with close attention. At its conclusion a pretty incident is staged. The officers of the Association, having learned in some way that the day was the thirty-seventh anniversary of the marriage of Lord and Lady Macmillan, present a beautiful bouquet of red roses to Lady Macmillan.

THE Music Hall of the Auditorium was filled Wednesday evening with a vast and brilliant audience eager to welcome and hear Lord Macmillan, who had come to the meeting as a representative of the British Bench and Bar. In introducing him, President Vanderbilt said:

"If I were presiding at a meeting held anywhere in Great Britain this evening, all that it would be necessary for me to do would be to simply remark that I have the great honor to present to you the Right Honorable Lord Macmillan, because over there everybody knows the speaker of the evening without further introduction. I think, however, that it is desirable that you tolerate your Chairman of the evening for a minute or two while I inform you briefly of some of the high points in the career of our distinguished guest.

"Lord Macmillan was born in Scotland, as you may have suspected, educated at Edinburgh University where he graduated with first class honors in philosophy, educated in law at Glasgow University where he was a Cunningham scholar. He holds honorary degrees from universities in Scotland, England, Canada and America. For years he was a leading advocate of the Scottish Bar. In 1924, he was called to the position of Lord Advocate of Scotland under unique circumstances. That position carries with it not only a place in the British Cabinet but the Lord Advocate of Scotland ranks second only to the Lord President of the Court of Sessions and before all of the other Scottish judges.

"The Socialist Party had come into office and needing a competent Attorney General, as we should call him, found no one available and, after the necessary preliminaries by way of the interchange of letters which were duly published in the London Times, Mr. Ramsey McDonald appointed Mr. Macmillan as he then was, to be Lord Advocate in Scotland, upon the distinct understanding that he should be charged only with the professional duties of the office and not held in anywise responsible for the political aspects of that distinguished position.

"Thereafter, Lord Macmillan practiced almost exclusively in London and appeared exclusively before the Parliamentary Committees, the House of Lords and the Privy Council. He was made an honorary Bencher of the Inner Temple in 1924 and Lord of Appeal in Ordinary in 1930.

Becomes Member of the Privy Council

"Upon becoming Lord Advocate, he was made a member of the Privy Council, and since becoming Lord of Appeal in Ordinary he has been a member of the Judicial Committee of the Privy Council which hears appeals from one-quarter of the civilized globe. In 1937, he was decorated with the Grand Cross of the Victorian Order for distinguished service to three successive sovereigns.

"Now that in itself is a formidable record, but it only tells you perhaps the slighter part of the story, for in his odd times, Lord Macmillan has been chairman of this and that Royal Commission appointed to investigate various subjects, including the Royal Commission of 1924 on Lunacy and Mental Disorder, the Commission whose report has had outstanding results not only in Great Britain but in other parts of the civilized world. He was Chairman in 1925 of the Court of Inquiry in the coal mining industry dispute. In 1924, he was Chairman of the Treasury Committee on Finances and Industry which handed in the document which is still referred to as the report of the Macmillian Commission, dealing with the finances and industry of England.

"And so I might go on through an indefinite number of these important commissions. Largely because of the work which he did on the Commission on Finance and Industry, he was invited over here, in fact, almost commanded to come over here in 1933 as Chairman of the Royal Commission on Canadian Banking, and the story of that Commission is characteristic of our distinguished guest. They visited the various large cities of Canada, took testimony and accumulated information, and then they returned to Ottawa. When they got there, the suggestion was made to Lord Macmillan, this being some time in August, that if he would come back some time in October or November, they might be ready then to get out a draft of the report. Lord Macmillan is said by a friend of mine to have suggested that if they would lend him a couple of their experts over the weekend, he would see what he could do toward drafting a report which they might look at the next week. When they got together on Monday they found a draft that was so sufficient and so satisfactory that it was accepted and signed by all of the members of the Commission fairly early on Monday morning.

A Few Subsidiary Activities

"Now if these do not seem enough to keep an ordinary man busy, let me recount just one or two other subsidiary activities. He is a Chairman of the Court of the University of London, which

means he is a chief officer of that university. He is a trustee of the British Museum and of the National Library of Scotland. He is a Chairman of the Pilgrim Trust, an endowment created by Mr. Harkness, who largely puts the disposal of this trust at the wish and decision of a very small group, of which Lord Macmillan is Chairman. And he is a member of the Carnegie Trust for the University of Scotland. Just how one man does all of these things is not only a mystery to us but I take it, from what I learned when I was in England last February, somewhat a mystery to Englishmen and even to his own countrymen.

"I went over there primarily to make sure that we had at this annual meeting a distinguished representative of the English Judiciary. Lord Macmillan was very helpful in bringing about a satisfactory solution. He told me the first evening that I met him, and I shall never forget that very memorable occasion to me, that he would do the best he could and when I ran into difficulties of an official nature, he agreed to be the sacrifice and to come here in person with Lady Macmillan. I can't conclude this introduction without telling you two small incidents for which he may or may not forgive me, but they will get over to you better than these formal statements of accomplishments somewhat of the character of the man.

Some Characteristic Incidents

"I had been invited by Lord Macmillan to have lunch with him so we could talk over this project of his coming to America. As I was waiting at the House of Lords, a small company, seemingly of English business men, came in, five or six, to stand a moment and listen to the proceedings. They talked in whispers, but I could manage to hear what they said. The man who was showing the others around, pointing at four or five judges who were sitting there, finally turned to one of the judges on the left and said, 'There is old Mac. You remember the wonderful speech we heard him make last year.'

"I thought to myself, 'Would it be possible, for example, for anybody to go down to the United States Supreme Court,' (Laughter) 'and say, for example, of Justice Oliver Wendell Holmes, 'Why, there is old Ollie.'" (Laughter) But, at any rate, it brought the man home to me, as I have no doubt it does to you.

"The other example is of a somewhat more personal nature. The barristers over there did me the great honor of asking me to go to church with them on Sunday to the Temple, and after lunch to go into the Inner Temple, where the benchers and their ladies were having their Sunday noon luncheon. As we went into the robing room, there were various hooks around on the walls with names of the benchers near each of them, and they said, 'Hang your hat up anywhere.'

"I don't know whether it was a matter of distance or my observing the name, but at any rate I hung my hat up on the peg that was labeled 'Macmillan.' Promptly they slapped me on the shoulder and said, 'Bravo! That means good luck for you, old fellow.' (Laughter) So I see it is not only the people but the barristers and the other judges that hold our distinguished guest in real affection and admiration.

"Now I have talked altogether too long for one who is introducing a speaker, but I felt I owed it to you to try to get over to you in small degree the charming personality of our guest of honor. I take indeed great pleasure in presenting to you The Right Honorable Lord Macmillan, Privy Councillor."

HON. JOHN P. DEMPSEY
Chairman, Committee on Trial by Jury Including Methods of Selection of Jurors

Lord Macmillan Delivers Address on "Education for the Law"

The audience arose and applauded in hearty greeting. Lord Macmillan delivered his address, which was published in full in the August JOURNAL. Before doing so, he said:

"I am happy, indeed privileged tonight to be able to respond to the far too generous words of my friend, your President, in words not of my own choosing but in the words of the head of the English Judiciary, for before I left London, the Lord Chancellor asked me to convey in his name to the American Bar Association a message which I propose now to read to you. It is addressed to me from the House of Lords and runs thus:

Notable Message from the Lord Chancellor

"8th July 1938.

"MY DEAR MCMILLAN:

"While the great Seal, as you know, may never leave these shores, its keeper is happily under no restriction in the expression of his good-will towards those who practice the law in other lands.

"I am glad to know that at the meeting of the American Bar Association at Cleveland this year you will be present as the British representative, and I rejoice that

you will convey to the President and Members of the Association a most cordial greeting from their British brethren. Like yourself, I am well aware of the splendid service which the American Bar Association throughout the past half century has rendered in maintaining the traditions of our great profession and in promoting its contribution to the cause of ordered civilization. At few, if any, moments in the world's history has there been better reason to realize how precious are the principles of justice and freedom which are our common heritage or more need to be resolute in upholding these principles.

"It is, therefore, with special sincerity that I wish for the American Bar Association once again in annual meeting assembled a successful and inspiring session.

"I would only add that, recalling the great pleasure of our visit to the United States in 1930 as two of the guests of the Association, I regret that it is not possible for me to accompany you and Lady Macmillan this year —though I will add I should hope to come only as a listener—and to renew the friendships which I made eight years ago.

"With best of good wishes to you both and to your kind hosts,

"I remain,
"Ever yours sincerely,
MAUGHAM
"LORD CHANCELLOR OF GREAT BRITAIN."

Graceful Tribute to Lady Macmillan

As the gifted speaker resumed his seat, amid hearty applause in appreciation of his earnest message, President Vanderbilt said:

"I am sure, Lord Macmillan, that to this reception from the members of our Association I do not need to add a single word by way of expression of our gratitude and indebtedness to you. Now with Lord Macmillan came Lady Macmillan. (Applause) She is as charming as he is genial. It so happens that we discovered late this afternoon that today is the 37th anniversary of their wedding and the officers thought we would be but reflecting your sentiments if we showed our good wishes and good will by presenting, through our Assistant Secretary, Mr. Stecher, a small bouquet to Lady Macmillan."

The Assistant Secretary thereupon descended from the platform and presented the bouquet to Lady Macmillan, who was seated in the audience. It was really a pretty incident and everyone heartily applauded the presentation. Lady Macmillan bowed her acknowledgments graciously to all parts of the audience.

The third session of the Assembly was thereupon declared adjourned. It was one which will live long in the memory of all those present.

PROFESSOR EDSON R. SUNDERLAND
Chairman, Committee on Simplification and Improvement of Appellate Practice

Fourth Session of Assembly Hears Author Read Winning Essay in Contest Under Ross Bequest — House's Action on Proposed Amendments to Constitution and By-Laws Presented and Concurred In — Resolution Committee Reports and Is Sustained in All Cases

THIS session demonstrates clearly the important functions which the Assembly discharges under the new organization. Mr. Albert E. Stephan, the winner of the 1938 Ross Essay Contest reads his essay on "The Extent to Which Fact-Finding Boards Should Be Bound by Rules of Evidence." He is heard with close attention as all recognize the immediate significance of the question. Proposed amendments to the Constitution and By-Laws, requiring concurrent action by Assembly and House, are presented by Secretary Knight, with a statement of the House's action thereon. Two of them call for fundamental changes in the present method of nominating officers of the Association. The Assembly agrees with the House that the proposals be not adopted, but that the whole subject of nominations be given careful consideration by a special committee. Then the Resolutions Committee reports. Every member has had the opportunity to bring any matter before the Association which he desires. The reasons for the Resolutions Commit-

tee's action in each case are given by Chairman Day. Lively discussion follows in several instances, but the committee's view is uniformly sustained by the Assembly.

AFTER calling the Assembly to order President Vanderbilt announced that the first order of business was the presentation of the prize award for 1938 under the Ross Bequest. Under the will of Erskine M. Ross the prize this year is in the amount of $3000. Seemingly, to win this prize one must go West and, more latterly, very far West. This year it is awarded to Mr. Albert E. Stephan, of Portland, Oregon, for a paper the subject of which is "The Extent to Which Fact-Finding Boards Should be Bound By Rules of Evidence."

"There were a great many splendid essays filed in the competition; and the Committee, made up of Judge Ransom, Judge Adkins, and Dean Horack, deliberated long on the matter. We are greatly indebted to them for the time and patience which they put in on their work.

"It is a great pleasure, therefore, to make the award to Mr. Stephan."

Before reading from his essay, the prize winner said that he would like to pay grateful tribute to his wife, Kay, for the large measure of help which she had given him and to some good friends in the Pacific Northwest who had critically read the paper. The essay was printed in full in the August issue of the JOURNAL (p. 630).

RALPH M. HOYT
Chairman, Committee on Administrative Agencies and Tribunals

Report on Cooperation Between Press and Bar

Mr. Giles J. Patterson, Acting Chairman of the Committee on Cooperation between the Press, Radio and Bar, was recognized to present its report. He said that the origin of the Committee was aided by a suggestion made by the Honorable Newton D. Baker in a statement commenting upon the Hauptmann trial. The suggestion came from several sources that the evils attendant upon the publicity of trials could be eliminated or at least materially diminished if the American Bar Association would appoint a committee to confer with representatives of the press and radio and by an agreement attempt to fix the proper limits of publicity during the trial. Mr. Patterson added:

"Mr. Baker was appointed Chairman of that committee. An invitation was extended to the two Press Associations, and committees were appointed by the American Society of Newspaper Editors and the American Newspaper Publishers' Association. Mr. Paul Bellamy of the Cleveland 'Plain Dealer' was Chairman of the latter, and Mr. Stewart Perry of Adrian, Michigan, Chairman of the former.

"A joint meeting of all three committees was held, at which time the views of both lawyers and newspapermen were thoroughly aired. Fortunately, Mr. Baker appreciated the delicacy of the task imposed upon the committee and at the first meeting devoted his efforts primarily to establishing harmonious relations. The foundation for the work having been thus laid, the discussion turned into the ways and means and propriety of the various methods utilized by the press for giving publicity to trials.

No Accord as to Use of Camera in Court Rooms

"A sub-committee was appointed, composed of Mr. Baker, Mr. Bellamy and Mr. Perry, and a report was drafted embodying in substance the views that had been expressed at the first meeting, submitted to all three committees, and after subsequent sessions, was finally approved by them. Unfortunately, there was one point in that report which was a source of considerable debate and upon which no definite agreement was ever reached, except that the committees in a friendly way agreed to disagree, and that was on the propriety of the use of cameras in the courtroom.

"The Baker report was submitted to the Kansas City Convention and a resolution was adopted approving that report in so far as it purported to represent an accord between the three committees, and the committee was continued with instructions to continue negotiations with the representatives of the press, in an effort to reach a more complete accord. Unfortunately, our leader was lost to us before the newspaper conventions acted, but last April the two newspaper associations took action similar to that of the Kansas City Convention and approved the report of the sub-committee and of the three committees in so far as an accord had been reached, and continued their respective committees with similar instructions to those given to this committee in Kansas City.

"At first, it was not considered advisable to take up the subject with the representatives of the radio for reasons it is not necessary to discuss, but recently, those representatives have indicated

to our committee a willingness to join with us in this common effort to find the ground upon which we can all agree and which can then be presented to the membership of the various local Bars and State Bars in an effort to make findings of principle effective in practice. . ."

After referring to the recommendation in the original Baker report, that the principles agreed on should be made effective by local Bar Association committees acting in conjunction with representatives of the local paper in dealing with local situations as they arose, Mr. Patterson moved that the committee be continued with the powers set forth in the resolution as printed in the Advance Reports.

Question of Committee Jurisdiction Clarified by Assembly Action

Referring to the powers conferred by the proposed resolution, Chairman McCracken of the Committee on Professional Ethics rose to inquire whether such pronouncements as were contemplated by the committee from time to time might infringe on the work assigned to the Professional Ethics committee. He proposed an amendment designed to clarify the territory of the two committees and Chairman Patterson stated he certainly had no objection to such a clarification and was perfectly willing to accept the principle of the amendment.

After some further discussion, participated in by Judge Hallam, of Minnesota, and Mr. Louis Cohane, of Michigan, the amendment was adopted. It read as follows: "Except that it [the committee] shall not express any opinion upon any question of professional or judicial ethics that may arise in connection with any of the foregoing matters nor take any step to bring about compliance by any lawyer or judge with any attitude of this Association that has been expressed in a canon of ethics." Before putting the question President Vanderbilt called attention to the fact that practically the same language had been used in defining the jurisdiction of the Committee on the Unauthorized Practice of the Law. He also announced that the recommendation that the committee be made a standing committee had not been duly filed and announced as a proposed amendment of the By-Laws, and that it would therefore be necessary to continue it as a special committee. This was done.

Reports on Duplication of Legal Publications and Law Lists

The report of the Special Committee to Consider and Report as to the Duplication of Legal Publications, was presented by Mr. Clarence A. Rolloff, of Minnesota, in the absence of Chairman Eldon R. James. It had been printed in the Advance Reports. The recommendation that the committee be continued was adopted.

Then followed the report of the Committee on Law Lists, presented by Chairman Atwood of Missouri. The chairman's remarks, as well as the schedule of such Law Lists as had been approved by the committee, appear in the August issue of the JOURNAL (p. 678). The committee was continued.

Proposed Amendments to Constitution and By-Laws

Secretary Knight then presented the proposed amendments to the Constitution and By-Laws (printed in the Advance Program) which had been acted on by the House of Delegates. The first one was to amend Article VIII and Article V, Section 4 of the Constitution, so as to take Puerto Rico out of the Territorial Group and give it a separate Delegate. On vote it was also adopted by the Assembly. The Amendment to Article V, Section 5, of the Constitution, for the purpose of making it clear that the terms of new State Delegates begin at the end of the meeting succeeding their election was adopted by the Assembly.

DEAN JOHN H. WIGMORE
Chairman, Committee to Suggest Improvements in the Law of Evidence

The next proposed Amendment, to Article I, Section 1, of the By-Laws, to provide for separate Committee on Admissions and Membership, was then taken up. Secretary Knight stated that the House of Delegates had adopted it, and the Assembly thereupon also approved it.

Mr. Lawther Supports His Amendment

The next proposed Amendment was to Sections 1 and 2 of Article VIII, and was referred to as the Lawther Amendment. It provided that the officers of the Association should not be nominated in advance or by the State Delegates, as at present, but on the floor of the House, at the meeting at which officers were elected. Mr. Harry P. Lawther, of Texas, its proponent, was recognized and spoke earnestly and at length in favor of its adoption, along the lines of his letter published in the July JOURNAL.

Action of House Defended

Mr. Sylvester C. Smith, of North Carolina, was

recognized and spoke in opposition to the Lawther amendment.

Mr. William O. Wilson, of Wyoming, favored its adoption.

Lawther Amendment Rejected

President Vanderbilt put the motion and announced that the "noes" seemed to have it. A division was called for and the vote, as counted and announced, was 26 for and 176 against.

Secretary Knight then announced that the proposed Amendment to Article X, Section 1, of the Constitution creating a Standing Committee on Legal Publications and Law Reporting—thus changing the committee from the special to the standing list—had been adversely reported on by the Committee on Rules and Calendar of the House of Delegates and had failed of adoption by that body. Unless there was a motion in the Assembly to adopt it, the amendment would fail by reason of the House's rejection. No motion to adopt was made and the House rejection therefore stood as final.

The proposed Amendment to Article VIII of the Constitution providing that nominations for Officers of the Association shall be by petition, the Secretary announced, had been adversely reported by the Committee on Rules and rejected in the House. It, too, would fall of its own weight unless the Assembly chose to consider it. Mr. Mayer C. Goldman, of New York, thereupon moved that the Assembly adopt the Amendment. Mr. Guy R. Crump, of California, stated that Mr. Harris, of Cleveland, the proposer of the Amendment, had in effect withdrawn it in the House of Delegates, stating that he was entirely satisfied with a motion which was made there and carried, that the Rules Committee give the whole subject of nominations further study during the year. Mr. Goldman thereupon withdrew his motion.

Resolutions Committee Reports to "Open Forum"

The next order of business was the report of the Resolutions Committee. The resolutions offered on the floor of the Assembly this year were not of such a character as to evoke the usual attendance, interest and debate at the "Open Forum" session, which continued to serve its principal purpose of assuring open and adequate public discussion and vote on any resolution which any member wishes to offer for consideration at an annual meeting. The temperature and the friendly temper of the whole meeting may have dissuaded highly controversial resolutions. Judge L. V. Day, of Nebraska, Chairman, stated that the committee had afforded a full public hearing to all proponents and opponents of resolutions referred to it by the Assembly and had investigated the subject matter as much as possible.

Resolution No. 1, Judge Day stated, related to public defenders for accused poor persons. The committee was fully aware of the importance of the subject matter namely, the furnishing of legal assistance to poor persons accused of crime, and it recognized the devoted service given in furtherance of this objective over a long term of years by the proponent of the resolution. The matter, however, was in the field of an able and conscientious committee of the Association, which reported on

HON. JOSEPH A. MOYNIHAN
Chairman, Committee on Pre-Trial Procedure

the subject last year, and, as the committee understood, expected to continue its interest. This was the Committee on Legal Aid Work; and the Resolutions Committee therefore recommended that the present resolution be referred to the Standing Committee on Legal Aid.

Committee's Report on Public Defender Resolution Opposed

Mr. Mayer C. Goldman, author of the resolution, objected to the recommendation of the Committee on Resolutions to refer the subject to the Committee on Legal Aid Work. He was a member of the Committee on Legal Aid Work last year, and the committee gave some thought to the question, but did nothing about it. The Section of Criminal Law of the Association had also given some thought to the subject during the past few years, but had done nothing. He submitted that the subject was important enough to warrant the creation of a special committee to consider the problem and that Association members were justified in putting themselves on record as favoring the principle of public defenders and appointing a special committee to deal with the subject.

Mr. Goldman then called attention to the successful operation of the public defender system in Chicago and a number of the cities of the country. He directed special attention to a resolution adopted at the September, 1937, session of the Judicial Conference in Washington, approving "in principle the appointment of a public defender

where the amount of criminal business of a district court justifies the appointment." He moved that the report of the Committee on Resolutions be rejected and that the resolution as proposed be adopted.

Mr. Charles M. Thompson, of Illinois, offered an amendment that the resolution be referred to a special committee to consider the subject and report on it next year. He himself came from Chicago where the system had been in successful operation for some time. He had also sat in the criminal court as a judge and he was heartily in sympathy with the views expressed by the author of the resolution.

Chairman Day Explains Committee's Action

Chairman Day replied that there was no question in the mind of any member of the committee that an accused person was entitled to a defense to protect his liberty as well as his property. But there was grave doubt whether a public defender would take care of the situation better than is now done in almost every State of the Union. Moreover, a public defender system was not as cheap as many were inclined to imagine; and, thirdly, there are so many things for the American Bar Association to do that it is not practical to appoint separate committees for all individual jobs. The men on the Committee on Legal Aid were distinguished lawyers and there had been no complaint as to the time and attention they had given this subject.

Perhaps owing to the prevailing temperature and humidity, the attendance of members present in the Assembly, from among the great number present in Cleveland, was at this point hardly such as to assure representative action upon such resolutions as were offered for debate and vote. The wisdom of the requirement that the representative House of Delegates vote also on resolutions, before they become the action of the Association, was manifest. Nevertheless, those members present in the Assembly were entitled to express and vote their views. A vote was taken on the public defender matter, a division was had, and the amendment was lost—44 to 64. The resolution of the committee was then adopted.

Resolution Regarding Justice Black

Chairman Day then presented the Committee's report on Resolution No. 2 as follows:

"This resolution provides, in substance, that the President of this Association be directed to appoint a special committee of five of our members who practice before the Supreme Court of the United States to file a petition with that Court praying a determination whether a member of its bar is entitled to raise the question as to whether Mr. Justice Hugo L. Black holds his position without constitutional authority because of the provision that no Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time.

"The action of your Committee on this resolution is as follows: On October 11, 1937, the Supreme Court of the United States in the matter of *Ex Parte, Albert Levitt, Petitioner,* denied a motion made by Mr. Levitt for leave to file a petition for an order requiring Mr. Justice Black to show cause why he should be permitted to serve as a Justice of the Supreme Court of the United States for the identical grounds mentioned in the resolution hereinabove quoted.

"The opinion of the Court says: 'The motion appears to disclose no interest upon the part of the petitioner other than that of a citizen and a member of the Bar of this Court. That is insufficient. It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of the executive or legislative action, he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action, and it is not sufficient that he has merely a general interest common to all members of the public.'

"We cite numerous cases: On the same day in the matter of *Ex Parte B. A. Kelly, Petitioner,* the Supreme Court of the United States denied a motion for a hearing on the title of Mr. Justice Black as a member of the Court under authority of the decision in the Levitt matter. We accordingly recommend that the resolution be not adopted."

Proponent of Black Resolution Speaks

Dean Edward T. Lee, author of the resolution, spoke in its support. The resolution was not introduced to gain publicity, as had been charged. The lawyer, in his opinion, has not only a traditional interest in the composition of the court of which he is an officer but a constitutional interest as well. The resolution aimed to obtain in the near future instead of some distant year a decision of the Supreme Court on the question whether Hugo L. Black is a de jure member of the Court. The adverse action of the Supreme Court in the two instances referred to was based upon procedural grounds and did not go into the merits of the question. True the ancient remedy of the writ of *quo warranto* might be applied but the only person who could seek that remedy was the Attorney General and he had not seen fit to do so. This was too great an issue to be decided by any one man.

Dean Lee then discussed briefly the two grounds on which Justice Black's right to sit on the Court had been challenged and expressed the view that his right to do so was highly questionable and the taxpayers generally had a right to a speedy determination of the issue. "There is reason to hope," he concluded, "that the Court would permit our committee to present its case as it has on more than one occasion during the past year broken away from ancient precedents and technicalities of the law."

Substitute for Resolution Proposed

Mr. Lessing Rosenthal, of Illinois, was in sympathy with the objective of the resolution but felt it would be idle to approach the Supreme Court in that manner. He proposed a substitute, which after reciting that the right of Hugo L. Black had been challenged by a number of men high in authority and by some persons holding important places in our legislative halls, which challenge had been based on two grounds (setting them forth), and further that it was of the greatest importance that his right to hold the office be definitely deter-

mined, provided that the President of the Association appoint a committee of five members to examine the questions raised and to take proper steps to have them determined.

Dean Lee accepted the substitute and moved its adoption. Mr. Sylvester C. Smith, of New Jersey, raised the point of order that this was not an amendment to the resolution before the Assembly but a new resolution which should go to the Resolutions Committee. The Chair sustained the point of order. The question was then put, a division was called for and had, and the original resolution of the committee prevailed—67 to 16. Mr. Rosenthal then offered his amendment as an original resolution and asked that it be referred to the committee. The chairman announced that the committee could hardly be gotten together again at this late date. After some further discussion the resolution was accepted by the secretary to be presented to the committee at its next meeting.

Action on Other Resolutions

Chairman Day proceeded with the committee's report. Resolution No. 3 recommended that members of the Association in each of the States hold one or more meetings a year, under the supervision of the State Delegates, to discuss some activity or activities of the organization. The committee recommended that the resolution be referred to the Section on Bar Organization Activities, and this was done.

Resolution No. 4 recommended a better indexing and digesting of the reports of sections and committees and of other material published under the auspices of the Association. The committee felt that the desirability of the project was not in controversy and that it was only a question of the availability of funds to carry it out and as to its feasibility and organization at this time. The Board of Governors had created, and the President of the Association had appointed, a special committee on the general subject about two months ago. This committee expected to present a report to the Board of Governors at this meeting, and it was in favor of the project provided it could be adequately financed and carried forward on an adequate and suitable basis. The matter should therefore be referred to the special committee, and the committee so recommended. A resolution to that effect was adopted.

Preservation of Early Court Records

Resolution No. 5 was to the effect that the American Bar Association recognizes the need of preserving and publishing early court records of legal and historical interest scattered in the court houses of the country and that the subject should be referred to an appropriate committee or a new special committee to consist of one member from each State and the District of Columbia. The committee realized the great interest of the profession in the matter and recommended that the resolution be referred to the Board of Governors to give consideration to the creation of a Committee on Legal History. Adopted.

Resolution No. 6, the committee reported, "involves the rights of the mortgagor and the mortgagee and raises questions of economic and social interest which are now being considered by a section of this Association. We recommend that the resolution be referred to the Section on Real Property, Probate and Trust Law for its consideration." Adopted.

Resolution No. 7, he continued, "involves a proposed amendment to the Constitution of the United States, authorizing Congress to pass marriage and divorce legislation. This is a proposal to solve the problems created by the wide difference in the laws of the several states with respect to marriage and divorce.

"The Conference of Commissioners on Uniform State Laws has been attempting to meet this same problem by the preparation and adoption of a uniform law. This committee is of the opinion, in view of the diverse social views held on this subject in different sections of the country, that it is preferable to deal with this problem through state legislation. The committee therefore recommends that the resolution be not adopted." The recommendation was adopted.

Resolution No. 8, the Chairman stated, "involves the present civil government of a foreign country, namely, Germany. In the opinion of the Committee, the resolution refers to a subject which is not within the purview of the Association, as stated in Article I of the Constitution. The Committee therefore recommends that the resolution be not adopted. Committee's view sustained.

Resolution, No. 9, the chairman continued, "relates to the joint committee of the Section of Real Property, Probate and Trust Law, with the American Society of Civil Engineers, for the purpose of establishing the certainty of location of boundary

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HON. WILLIAM L. RANSOM
Assembly Delegate in House of Delegates

PROCEEDINGS OF THE HOUSE OF DELEGATES

(*Continued from page* 713)

cerning appointment of court stenographers, was withdrawn by the committee at the suggestion of the Board of Governors because the subject matter was covered by the new federal rules.

Administrative Officer for Federal Courts Approved in Principle

The next resolution asked the approval of the principle in Senate Bill 3212 ("Ashurst Bill") creating an Administrative Office of the United States Courts with a director at the head thereof. Mr. Pogue explained that many modifications of the specific bill might seem desirable but that approval of the principle was deemed important.

On call for discussion Mr. Guy Richards Crump, of California, asked why the House should approve a bill in principle which is not yet drafted or in any event was to have a number of changes made in it. In reply Mr. Pogue stated that the purpose of the bill had been approved by referendum vote of the Association and also by the Bar generally throughout the United States. However, they were not fully satisfied with the wording of Senate Bill 3212 and so desired only a reaffirmation as to the principle. At Mr. Crump's suggestion that the matter go over to the mid-winter meeting of the Association, Mr. Pogue replied that there should be affirmative action at the present time to provide for the eventuality of a special session of Congress. He agreed that the committee would report back to the House in January on the bill as drafted.

Mr. John T. Barker, of Missouri, asked if the referendum referred to had not involved the approval of a "proctor" for the federal court. He stated that having voted for a proctor did not give anyone authority to say that he was committed to a "director." Mr. Pogue replied that this was a matter of names which did not change the principle involved. Another query presented to Mr. Pogue concerned the necessity of further approval if it had been given once with regard to the principle of the bill. He explained, in reply, that his committee had to take up each bill that was referred to it and therefore felt it desirable to have a statement of approval of the principle of this specific bill.

Chairman Morris observed at this point that in accordance with the interpretation of the referendum regarding the various proposals for adjustment in the judicial process, particularly of the Supreme Court, which interpretation was that the favorable vote in behalf of the then called proctor reflected the opinion of the members of the Association regarding an administrative officer of the Federal courts under jurisdiction of the Court, the Association's special committee with respect to changes in the Supreme Court, the Association's Committee on Jurisprudence and Law Reform, the Association of American Law Schools, the President of the Association, the Chairman of the House of Delegates in his capacity as Chairman of the Washington Committee had all appeared before individuals and committees of the National Legislature, of the Supreme Court and of the Attorney General's Office with respect to the furtherance of what they deemed to be the approved principle.

Importance of Bill to Independent Judiciary

Mr. John G. Buchanan of Pennsylvania, speaking on behalf of the recommendation, explained the importance of the bill in making the judiciary independent. Its purpose had been described, he said, as to make the judicial branch of the government, in the matter of the expenditure of the funds appropriated for it, independent of the executive branch in fact, pointing out that at the present time the expenditures necessary to carry on the business of the United States courts are under the administration of the Department of Justice, which is the chief litigant before these courts.

He stated that the approval of the recommendation did not commit the Association to anything more than the approval of the independence of the judiciary in the exercise of its powers after appropriations are made to it by Congress, instead of leaving those matters to the Department of Justice, as now.

Mr. Barker then came to the platform and said that in his belief the bill was totally destructive of the independence of the judiciary. He was opposed to the idea of having a proctor, as he was originally called, a director now, or anyone else supervising or controlling the courts. He asserted that: "Either this bill will give this man the absolute control and authority, even to the extent of dictating opinions which judges give, or else it won't amount to anything; it is just another job for somebody. . . The purpose of it, as I understand it, is that they are going to check the districts and see how these judges are getting along; they are going to see how many opinions they have written. Well, they know that now. You can get that in five minutes any time you want it. The Senior Judge of the Eighth Circuit has a check of every district before him. . . If there is a congested docket, he sends a man down there and takes care of it." Mr. Barker went on to point out features of the bill which in his opinion would prove annoying and result in "snooping and spying" on the courts.

Dean Herschel W. Arant, of Ohio, at this point observed that part of the argument of General Barker seemed to be ill-timed, for the reason that whether it was good or not to have a snooper, "as he calls the proctor," the Association had by referendum approved such a proposal. Mr. Barker interrupted to question this, but Dean Arant replied that the question must be decided in terms of duties rather than by the name of an officer. He went on to say that objections to the bill that he had heard at the hearings were that the bill as drawn provided that this proctor should be responsible to the Chief Justice of the United States and to the Conference of Senior Circuit Judges, and that the bill provided

that the accounts of the Administrative Officer should not be subject to audit.

Duties of Administrative Officer of the Courts

It was because of these objections, Dean Arant said, that he believed Mr. Pogue was asking the House to approve the bill in principle rather than as drafted, and he felt that it was only proper that the principle of the bill be approved. In reply to a further question from Mr. Barker concerning the duties of the officer that would be created by the bill, he said:

"Among the duties, the important ones, that will be discharged by the proctor will be to accumulate statistics relative to the work of the Federal Courts, and those statistics will be centralized, digested, and brought to the attention of the Chief Justice in so far as they indicate that any action should be taken with reference to the work of the courts in any particular district or circuit. What is done with reference to any proposal that may be suggested by such statistics will be subject to the approval of the Chief Justice of the United States. That is one thing.

"Another thing that will follow if this bill is approved will be to divorce the courts from the Department of Justice with respect to the financial control of the affairs of the court. The budget of the courts as now made up is subject to a large measure of control by the Department of Justice, and the Attorney General of the United States thinks that to divorce the courts from the Department of Justice in that respect contributes to the independence of the courts. He thinks that it is absolutely absurd that the Government and the Department of Justice, which represents the Government, the biggest single litigator in the Federal Courts, should have as much control over the courts as inheres in the fact that the Department of Justice has so much control over the finance and business of the courts."

Mr. Barker indicated that he was still not satisfied with the explanations given, but on vote being taken the recommendation of the committee that the principle of the Ashurst Bill be approved was adopted by the House.

Mr. Pogue then presented the next resolution, which concerned the removal of district judges. He stated that the committee had approved the enactment of H. R. 2271 providing said bill be amended so as to provide for a court of seven circuit judges and to allow an appeal in all cases on questions of law. The resolution also asked that the Association's former resolution with regard to this matter be modified so that on questions of material and controlling facts an appeal shall be allowed where one judge dissents.

Method of Removing Federal Judges Approved

At this point Mr. Slaton, of Georgia, asked how the procedure for the removal of a district judge could be had except by the Congress of the United States, by impeachment. Mr. Pogue stated that that question had been debated very much as to whether anybody has any right under the Constitution to take any other procedure than that now obtaining, but in view of the fact that the Association at Kansas City passed a similar resolution, the committee thought it only fair that the person charged with some misconduct, if he have a disagreement on the facts by any one of these seven judges, shall have the same right to review as he did on any case at law.

Mr. Slaton then expressed himself as unalterably opposed to any method other than impeachment. A division was called for on the vote on the resolution and after a standing vote the committee's recommendation was declared approved.

The next resolution declared that the Association reaffirmed its action and recommended that the expense allowance to United States District Judges be restored to $10 a day when they are holding court away from their place of residence. The recommendation was adopted without debate, as was the next one, which dealt with the question of a state being allowed to intervene in the United States Court where the statute of that state is involved. The committee thought that it was only proper that every state should be allowed to defend its own statutes when it is attacked in the United States Court.

The following resolution (number seven) urged that the President of the United States be permitted to veto individual items in appropriation bills without being under the necessity of vetoing the whole measure. Mr. Crump of California moved that the resolution be laid upon the table as outside the proper scope of action by the Association. Mr. Crump's motion was seconded and carried and the resolution laid upon the table.

The next resolution (number eight) stated that the Association recommended the extension of the principles of Section 380 of the United States Judicial Code, with respect to the granting of interlocutory injunctions, suspending or restraining the enforcement, operation or execution of state statutes because of unconstitutionality, to like cases involving federal statutes. Mr. Buchanan of Pennsylvania inquired if legislation embodying this recommendation had not already been passed. The members of the committee being unable to agree on the matter, a motion to recommit the resolution to the committee for report at the January meeting carried.

Action on Committee's Other Resolutions

Resolution Number Nine was withdrawn by the committee as unnecessary after the adoption of the new federal rules of procedure. Number Ten was also withdrawn so that the committee might have a conference with the Committee on Commerce concerning the amendment of the Federal Employers Liability Act. Resolution Number Eleven stated that the Association disapproved of federal legislation on marriage and divorce. Mr. Beardsley of California moved that the resolution be laid upon the table on the ground that "it is something that somebody else can take care of rather than the American Bar Association." This motion was seconded, put to a vote, and carried.

Mr. Pogue then introduced the last resolution (number twelve) involving a disapproval of H. R. 9211 relating to the subject of preliminary hearings upon petition for naturalization. He stated that it was the opinion of the committee that naturalization was a matter which should be left entirely in the hands of the national government and that the states should not interfere in any way with the legislation as it now stands. Mr. Crump asked that H. R. 9211 be explained and Mr. Pogue stated again that the provisions of the bill would allow the State Courts to interfere in naturalization proceed-

ings and the committee felt that this was undesirable. A motion to recommit the resolution to the committee carried.

At this point Mr. Thomas B. Gay, of Virginia, moved that the House proceed to consider as its next order of business the report of the Section of Judicial Administration. This motion was carried and Judge John J. Parker, chairman of the section, came to the platform.

Section of Judicial Administration Reports

Judge Parker thanked the House for hearing him out of order and then proceeded to review the work of his section during the past year. He stated that President Vanderbilt had asked the Section of Judicial Administration at the beginning of the year to undertake a study and to report to the Association proposals for the reform of the procedure of the courts of the United States. It was thought that this was an appropriate time to undertake such a study because the rules formulated by the Supreme Court were going into effect during this year and because the minds of the lawyers of the country would be directed to the important questions of administration and procedure in the courts.

In order to comply with the request of the President, Judge Parker stated that he appointed seven committees, and at the head of each he placed a man recognized as an expert on the subject which was assigned to him. The committees and their chairmen were as follows: Judicial Administration, Judge Edward R. Finch of New York City; Pre-Trial Procedure, Judge Joseph M. Moynihan of Detroit; Trial Practice, Judge W. Calvin Chesnut, United States District Judge, Baltimore; Trial by Jury and Selection of Jurors, Judge John P. Dempsey of Cleveland; Law of Evidence, Dean John H. Wigmore of Northwestern University; Appellate Practice, Professor Edson R. Sunderland of the University of Michigan; Administrative Agencies and Tribunals, Mr. Ralph M. Hoyt of Milwaukee.

The members of these committees, Judge Parker said, were selected with great care upon recommendations made by the American Judicature Society, and each committee was furnished with a corps of consulting and advisory members, one from each state of the Union, suggested by members of the House. The reports of these committees, he declared, constituted outstanding contributions to the thought on the subject. Some sixty-seven recommendations were made by the committees and the Section had approved all but one of these at its session during the Cleveland meeting.

Rule-Making Power of the Courts

Turning to the Committee on Judicial Administration, headed by Judge Finch, Judge Parker pointed out it had made four recommendations of importance, but he would mention only one of them; that is, the recommendation that the rule-making power be given to the courts of the states, as it has been given to the courts of the United States by Congress.

At this point Mr. Barker, of Missouri, asked if this meant that the legislatures of the different states must put the rules into effect as did the Congress of the United States, or that the courts can put them into effect without the approval of the state legislative body. Judge Parker replied that this was a matter of detail not dealt with in the report, which merely recommends that the courts be clothed with full rule-making power; that is, that the power to prescribe procedure be given to the courts. He added that how it should be given was a matter resting in the wisdom of the legislature and in the constitutional provisions of the several states.

Judge Parker then took up other important suggestions of Judge Finch, namely, the unification of the judicial system in the several states, and the requirement of quarterly judicial statistics but said that he would not attempt to elaborate upon these because they had been printed in the report of the section.

Turning to the report of Judge Chesnut's committee with respect to the improvement of trial practice in the court, he pointed out that fourteen recommendations had been made of which he would mention two.

"One of them is that the Federal practice as incorporated in the new rules be followed as near as may be by the several states, not because Judge Chesnut or his committee thinks that any sanctity attaches to these rules because they are promulgated by the Supreme Court or by the Federal courts, but because the committee believes that those rules constitute the best thought of the legal profession of the United States as to what constitutes an ideal system of procedure.

"The second and most important recommendation of his committee, I think, is that we should vest the judges of the courts of the several states with the powers that reside in the judge at common law. We believe that in large measure the criticism that has come upon the courts of this country has resulted from the fact that the judge has been stripped of the power that should belong to him as a judge."

Report on Appellate Practice

Judge Parker remarked that he had been particularly interested in Professor Sunderland's report on Appellate Practice. "As an Appellate Judge," he said, "I have been shocked from time to time by many of the unnecessary technicalities of appellate practice and procedure in our courts. This report of Professor Sunderland abolishes the unnecessary technicalities and simplifies appellate practice to the point that it has been simplified in a number of the states. He makes seventeen recommendations. I shall mention only one of them which I think is outstanding, and that is the recommendation that we cut down the cost of appeals by hearing the case upon the typewritten transcript instead of requiring printing. I know we have tried the practice in our court with respect to hearing cases from the National Labor Relations Board and it has worked wonderfully well. I understand it works well in at least half a dozen states of the Union."

Judge Parker referred briefly to the other reports of the Section Committees and then continued:

"Now, gentlemen, when these reports came in, we got the Council together and we made the recommendations specific, short, concise recommendations as to what we think should be done. There were sixty-seven of them, based on all of these reports, and those sixty-seven recommenda-

tions constitute, in our judgment, a complete program of needed reform in the procedure of the courts. I do not mean to say to you that they are ideal. We did not strive for the theoretical and the ideal. We strove to formulate practical suggestions upon which the minds of forward-looking men could agree, and I think it is significant that there has been but one dissent from the report of these committees and that was with respect to the Committee on Appellate Practice, and when the matter came before the Judicial Section—we considered them there for three days and gave everybody an opportunity to be heard by the Section on Judicial Administration—when these matters were taken up, the Section members seemed to have studied the reports in advance, and I think we had an intelligent consideration of them. Of the sixty-seven recommendations made by the Council, sixty-six were approved by the Section on Judicial Administration and one was committed for further consideration and that was the constitution of Appellate courts, which is not really a matter of procedure at all. So I think I am correct in saying that in every matter of procedure, we have not only the approval of the committees, not only the approval of the Council, but we have the approval of the Section on Judicial Administration.

"I have come to you to present this to you and I have done it as briefly as I could, to ask your blessing upon the work of the Section and to ask your cooperation in the work of the Section for the coming year. As practical men, you know as well as I do, if what we have done ends with the report of our Section, it is just another report that nobody will pay any attention to. It must be carried on if it is to amount to anything, and I think it should be carried on, not merely by the Section; I think it should be carried on by the Bar Associations of the entire country, because unless the force of this Association is put behind this movement, it will amount to nothing. I think that there is no more worth-while movement in which the Bar Association could engage. I ask your approval of the recommendations of the Council, which have been endorsed by the Section on Judicial Administration. I ask you to make those recommendations a special program for consideration during the ensuing year, and I ask that committees be set up in the several states to advocate and, if possible, secure the adoption of these recommendations in their respective jurisdictions."

Chairman Morris then asked which of the recommendations had not been adopted by the Section, and Judge Parker replied that it was number 14 appearing on page 16 of the report, and that had not been disapproved but recommitted for further study.

Adoption of Recommendations as Standards Urged

A motion that the House approve the recommendations of the section having been made and seconded, Mr. Barker of Missouri stated that there were a great number of recommendations in the report which were contrary to the law in Missouri, and would completely revolutionize practice there. He asked if approval was sought of these specific measures.

Judge Parker replied as follows: "I am glad you asked that question because it enables me to explain something that I probably should have explained and did not. I am not asking you to legislate as a legislator with respect to the practice of your particular state. What we are seeking to do is to establish standards of procedure towards which we can work in the several states. I know perfectly well that everything that we recommend here, for instance, is not going to be adopted by my state of North Carolina, but I think that everything that we have recommended here is sound."

There was some further interplay concerning the function of a judge in a jury trial between Judge Parker and Mr. Barker in which Judge Parker stated that in his opinion the jury trial worked best in those states where the greatest assistance can be received from the judge. Mr. Barker defended the Missouri practice by characterizing their jury trials as "delightful." After this the House voted to approve the recommendations of the Section.

(Note: These recommendations of the Section of Judicial Administration are set out in full in the report of that section printed and distributed to every member of the Association in advance of the Annual Meeting. They are presented in abbreviated form in this issue of the JOURNAL—pp. 726-727.)

The House also approved resolutions making the advocacy of these several recommendations a special program of the Association for the coming year and calling for the appointment of committees to this end in the several states.

The session of the House adjourned after hearing this report.

Third Session of House of Delegates—Important Committee Reports—House Approves Recommendation of Committee on Administrative Law Striking at Political Influence in Cases Before Administrative Agencies of Government—The Economic Condition of the Bar

IMPORTANT committee reports are received, debated and acted on. That on Administrative Law is presented by Hon. James R. Garfield, former Secretary of the Interior. House adopts committee's recommendation that members of Congress, officers and employees of the United States, and national officers of a political party be prohibited under penalty from rendering assistance, with or without compensation, in matters before any administrative agency of the United States, but refuses to include State officers of a political party in such prohibition. Present draft of bill regarding judicial review of administrative action is recommitted for further study with provision that it be approved by the Board of Gov-

Photos Courtesy of Cleveland Plain Dealer.

ernors before being introduced in Congress. Curious situation arises when twenty-eight former secretaries of the late Mr. Justice Holmes oppose recommendation of Committee on Facilities of the Law Library of Congress as to disposition of Holmes bequest. The House supports the committee's views that it should be used for assembling a collection of works on Jurisprudence, to be known as the "Oliver Wendell Holmes Collection." Chairman Rix of the Committee on Ways and Means stresses importance of Sustaining Memberships as a means of financing the Association's expanding activities. Committee on Economic Condition of the Bar presents notable Manual to aid in conducting surveys on this subject. Action on recommendations of various other committees taken.

THE third session of the House of Delegates convened Thursday afternoon, July 28, at two-o'clock, Chairman Morris presiding.

Judge A. B. Lovett, of Georgia, wished to correct the record of the preceding day's session with regard to one of the recommendations of the Committee on Jurisprudence and Law Reform. Mr. Pogue, the Chairman of the committee, had withdrawn recommendation number two (appearing on page 108 of the Advance Program) because he had been advised that the subject matter of the resolution was covered by the new rules of federal procedure. The resolution favored the enactment into law of S. 1625 allowing federal district judges to appoint official stenographers, providing the bill were amended to put definite limits on the amount of compensation. Judge Lovett stated that, while the new rules did provide that the cost of an official record may be taxed by the judge, this did not cover the subject matter of the resolution in question. His motion that the House consider and approve this recommendation of the committee carried without debate.

Significant Report of Committee on Administrative Law Precipitates Lively Debate

The next order of business was the Report of the Committee on Administrative Law. Dean Pound, the Chairman of the committee, not being in the country, unanimous consent was given to Mr. James R. Garfield of Ohio, former Secretary of the Interior and a member of the committee, to present its report.

As Mr. Garfield came to the platform Chairman Morris transmitted to the House the comment of the Board of Governors with reference to the committee's report. He called attention to the fact that the House of Delegates had approved "in principle" the draft of the bill presented by the committee at the Kansas City meeting, "subject to the approval of the bill by the Board of Governors." At its May meeting in Washington, he said, the Board of Governors considered a redraft of the bill and gave its approval to the form set forth on pages 165 to 171 of the Advance Program.

Chairman Morris added that in approving the form of bill submitted by the committee, the Board had no thought that it was perfect or that it might not be amended by the present committee itself or by subsequent committees. Yet the fact that the bill might be improved was not considered to be a reason for withholding approval of the fundamental approach which the bill followed. The Board recommended, therefore, that the bill as drawn be approved by the House of Delegates as a declaration of principle and that such amendments in form as may be subsequently made by the incoming committee be subject to the approval of the Board of Governors.

At this point Mr. Bert M. Kent, of Ohio, inquired if the Board in approving the bill had been under the impression that it was acting in accordance with the position taken by the House at Kansas City. A member of the committee had stated that certain matters (including patents) were to be excluded from the operation of the bill, Mr. Kent said, and it was on this understanding that approval had been given, yet these fields had not been excluded in the bill as printed in the Advance Program of the Cleveland meeting. Mr. Morris replied that, in his opinion, the Board must have thought it was proceeding on the action taken by the House at Kansas City as this was the source of its authority in the matter.

Non-Partisan Approach Taken

Mr. Garfield then began the presentation of the report of his committee. He stated that the grave problems created by the growth of administrative action had not been approached by the committee in a spirit of partisanship nor with any preconceived idea as to what ought to be presented. The study of the problems had been made on the broadest possible basis.

With reference to the report he said further:

"The history of what has been done not only in our country but abroad in dealing with this problem is covered by the report. The citations of authority are many. Many quotations have been made directly but most of them have been mere citation of footnotes, so that each one who wishes may go back to the original source for the purpose of determining whether or not the facts stated in the historical presentation of the growth of administrative law is correct.

"You will find that in most countries where administrative law has started in on the theory of absolutism, one line of development has taken place. In those countries where it has proceeded along the opposite lines, with a gradual development from no absolutism but bringing in through its consideration greater executive authority, another line of cases would obtain."

Concerning the objection of members of the committees on Customs Law and Federal Taxation and of the Patent Section that their specialties had not been excluded from the proposed bill as had been agreed at Kansas City, Mr. Garfield said that the committee had thought that they were acting in accordance with the agreement and had covered the matter in Section 6 of the proposed bill. There was no controversy on the matter, he added, and, if apt language had not been used, it would be.

Bill Incorporates "Certain Principles of Fairness"

Emphasizing the fact that lawyers must not stand in the way of orderly development of administrative processes which have to deal with important new social and economic problems, Mr.

Garfield insisted none the less on adherence to principles of fairness. His committee had formulated these, he said, and they appeared on page 164 of the Advance Program. The bill had attempted to incorporate these principles, he added.

Speaking further concerning these principles, he said:

"Your committee has sought to present principles that would justify the belief that a bill can be drawn in accordance with those principles of action, and it has suggested (and it is not new—it has been suggested before) that there be interdepartmental boards organized and created not for the purpose of the particular case that is pending, but be organized before any particular cases are heard; that cases involving private rights go before those interdepartmental boards, composed of three men, and that these boards shall be given the right to have that kind of investigation that protects the interests of government and the interests of the private citizen, and complete such a record as would enable either side, the private individual or government, to know exactly what is happening; that there will be no *ex parte* hearings, no *ex parte* consideration of evidence not presented to both sides; and that when the report is completed, it go to the head of the department for approval, disapproval, or modification, and that the head of the department have before him all the facts offered by either government or by the individual."

Necessity of Proper Judicial Review

Turning to judicial review, he said: "Our committee was unanimous on the proposition that judicial review of executive action is not only wise but also necessary if we are to preserve our form of government and preserve the rights of the citizens of our country in the administration of their private affairs. We recognize very fully that we should get away from the long and tedious appeals and reappeals and rehearings. We recognize the need of that kind of speed in actions before courts that would promote justice and that would do justice and not promote injustice, but, gentlemen, speed may be the curse of our modern civilization. Speed is well in its place, but it should be founded upon accurate knowledge and upon experience. Quick action, if taken by one of sound judgment and clear head, is what we want; but we do not want speed that is based upon thoughtless action or mere desire for an early determination of a question that is a hard question to answer.

"Therefore, we have provided in our principles that the rules of procedure dealing with judicial review should be those which we ordinarily accept in our practice of law. We believe when the reviewing court considers a record that is made up from an executive department or an executive agency, that that record should be complete, that that record should have in it every element that is necessary for a proper determination of the case, and that if there has been that kind of proceeding in the court of first instance, namely, the departmental board, then there is no need for an appeal from that action, but there is the need of an examination of the record to see whether or not there was substantial evidence in the record that justified the conclusion of the executive agency. . . .

"Your committee believes that if the complete record is before the Court and the Court finds that there has not been substantial evidence to sustain the action of the executive, then it opens the way to judicial review, and that does not provoke tedious litigation. It would tend, in the minds of your committee, to impose upon the agency or the Board that is hearing the case in the first instance, a higher degree of care to see to it that every opportunity is given to the parties before it, both the Government and the individual citizen, to have all the facts thoroughly presented."

Committee Recommendations Considered

After Mr. Garfield had outlined the report, the first action considered was upon the four recommendations urged by the committee as set out at page 134 of the Advance Program, it being explained that the recommendations were those which had been passed upon previously and that reaffirmation was desired.

Mr. Robert N. Miller of the District of Columbia, Chairman of the Committee on Federal Taxation, asked that he be allowed to make a statement. His objection was the one that had previously been voiced by Mr. Barnes of the Committee on Customs Law; that is, that certain fields had not been excluded from the operation of the proposed Act as had been agreed upon. It was pointed out to Mr. Miller that Mr. Garfield had stated the committee's desire to exclude these fields and had thought that it had done so. Mr. Miller said that if he had Mr. Garfield's assurance on the specific matter of internal revenue then he had nothing further to say. Chairman Morris then expressed again the fact that the committee recognized the need for clarifying the act so as to carry out the understanding reached in Kansas City.

The first resolution offered was that the Special Committee on Administrative Law be continued for further study of a number of important problems set forth in the report. After a motion had been made to adopt this, Mr. Walter M. Bastian, of the District of Columbia, asked if the chairman of the committee would accept an amendment providing that the proposed bill in the report of the committee be recommitted to the committee for further study, but Chairman Morris ruled this out of order. He stated also that after the recommendations were out of the way they would consider the proposed bill.

The first recommendation was approved.

Restricting Assistance Before Administrative Tribunals

The second recommendation proposed that the Association reaffirm its approval of extending the prohibitions of the Federal Criminal Code to the rendering of any service or assistance of whatsoever character, with or without compensation, by any member of Congress, officer or employee of the United States, or national or state officer of a political party before any administrative agency of the United States, or on behalf of any person, corporation or business organization in any matter involving a quasi-judicial determination affecting individual rights.

As soon as this resolution was read, it became evident that many members of the House regarded the proposal as giving support to an effort to ex-

clude lawyers from holding office in either State or Federal political committees, on penalty of being excluded from practicing law for clients before any administrative board or agency of the United States. The desire and purpose of the House to resist and oppose such a curb upon either the political activities of lawyers within their States or their professional activities for clients before Federal boards, were immediately manifest.

Professor John D. Clark Takes the Platform

At this juncture, Professor John D. Clark, Delegate of the Wyoming State Bar Association, took the platform and presented some carefully prepared observations which he regarded as pertinent to the pending resolution. He said, at the outset:

"I wish to speak in opposition to this resolution. I believe that the report, admirable as it is for a day which is rapidly disappearing, is as far out of touch with the realities of the hour as are those numerous reports we have before us in which it is suggested that there is some limitation upon the area within which Congress can legislate under its power to regulate commerce.

"Mr. Vanderbilt was not merely rhetorical when in his Monday address he suggested grave national problems soon to come. The stage is set. Action has already commenced. The new National Industrial Commission has already started its study of the whole problem of the relation of government and business enterprise.

"Out of this may come a true social revolution. That is no overstatement of the quality of a change from a policy of free enterprise, regulated by the automatic processes of competition, to a system in which government plans the course of all business and tells each businessman what part he is to play.

"If this appears academic to you, please observe that our profession exists upon the need of the individual business enterprises which will require no lawyer if they get their orders from Washington each morning. . .

"The Report of the Committee on Administrative Law deals with a subsidiary but highly important feature of government control of businessmen. Such control must be exercised by government officials, either single men or boards.

"The report is a sensational description of the oppression of the citizen which may result from the decrees of such a bureau. It proposes to establish methods to secure a fair hearing and a judicial review. Such a suggestion is full of merit if we are considering government officials who impose government restraints upon businessmen. It is a futile and even a dangerous suggestion if we are to enter upon a planned economy. . ."

Professor Clark continued to speak along these lines until the expiration of his time. Two or three members of the House felt that his remarks were political in character or were unrelated to the particular resolution under consideration. They attempted to interrupt the speaker with points of order, none of which were sustained by the Chair, who reassured the House that the speaker was confident that the relevancy of his remarks would soon appear.

Professor Clark finished his prepared statement well within the time permitted a delegate by the rules of the House. Reports in some newspapers that the speaker had been "hissed" were wholly unfounded. Nevertheless, many of the members of the House regretted the points of order, even though at the time well taken as to relevancy and propriety. It was felt to be better that the House traditions of free and open discussion, within each member's sense of responsibility and fairness, should be preserved at any cost of time and patience, rather than that any pretext be given for unfounded or exaggerated claims that full debate had been suppressed or discouraged.

Near the end of his statement Mr. Clark declared that the average businessman does not have a chance to get his individual case and needs considered by administrative boards. The proposal in the recommendation would now prevent him from asking for the aid of his Senator. "The only effect of the recommendation," he concluded, "would be to permit the executive agencies to thumb their noses at Senators and Congressmen as they have so much wished to do for five years."

After Mr. Clark had taken his seat a delegate from Ohio declared that he (Clark) had taken advantage of the House to make a speech and he moved to expunge the remarks from the record. The motion was seconded, and so was put to a vote, but failed to get many votes.

State Political Party Officers Excluded

Mr. Slaton, of Georgia, asked at this point if the recommendation would forbid calling a Senator or Congressman as a witness in a proceeding and Mr. Garfield replied that prohibition of calling anyone as a witness was not contemplated. In answering a further query from Mr. Slaton concerning the appearance in a representative capacity of a member of the state executive committee of a political party before an administrative tribunal of the sort mentioned in the resolution, he said: "Under the wording of this measure and as interpreted by what was done by the body a year ago, I should say that he would not be permitted to appear for that purpose. The purpose of this section is to prevent, so far as it is humanly possible, political pressure from being brought upon those agencies who are dealing with problems of this character."

Mr. Bernard Myers, of Pennsylvania, declared that in eliminating state political party officers from administrative practice the proposal was vicious. "I do not think," he said, "that any resolution should be passed that will eliminate honest lawyers from practice before boards of the national government. I do not think that any resolution should be passed that will eliminate honest lawyers from participation in politics, and I therefore think that it should be the duty of this House to refuse to pass this resolution, and I ask the members of the House of Delegates to vote against it in this form."

At this point Mr. Buchanan of Pennsylvania moved that the recommendation be amended by eliminating the reference to state officers of political parties. This motion was adopted after a call for a division required a standing vote. The House then adopted the recommendation as amended.

Resolution Number Three urged the extension of a selective civil service to all, other than cabinet officers and assistant secretaries of the departments,

engaged in quasi-judicial as distinguished from policy-making administration activities. It was adopted without debate.

The fourth resolution urged that more attention be paid to the matter of training for administrative practice and to this end recommended that the subject be brought to the attention of the Association of American Law Schools, the faculties of American law schools, and the practitioners before administrative agencies, in the hope that the subject be taken account of in law school curricula and better provided for, and that it would be taken up in the institutes held by bar associations throughout the country. This was likewise adopted without debate.

Consideration of Proposed Bill

The next matter considered was the draft of the proposed act "To Provide for a More Expeditious Settlement of Suits Against the United States and for Other Purposes" (page 165 of Advance Program) which, in effect, would establish rules regarding judicial review of administrative action. It was pointed out that the House did not really have any official business before it in this regard since the committee made no specific recommendation with reference to the bill.

Mr. Slaton, of Georgia, moved to bring the consideration of the bill to the floor of the House in order that he might move to strike certain language which had been objected to by Mr. Miller of the Committee on Federal Taxation. Chairman Morris was attempting to get the exact language of the amendment which Mr. Slaton was offering when Mr. Bastian of the District of Columbia asked the consideration of his resolution which was to recommit the bill to the committee for further study, consideration and report, and that the proposed bill be approved both as to form and substance by the Board of Governors or the House of Delegates before being introduced in Congress.

After Mr. Bastian had spoken in favor of his resolution it was ascertained that Mr. Garfield had no objection to it. There were calls for the question at this time, but Mr. Kent of Ohio came forward with the suggestion that something should be done to show disapproval of the bill in its present form since the House stood committed by the Board of Governors to the present bill as drafted. He, therefore, wished to move that the House withdraw the approval of the bill which it had given at Kansas City.

Committee Submits Clarifying Proposal

Mr. Maguire, of Oregon, a member of the Committee on Administrative Law, then stated that the committee had no particular pride of authorship in the form of or the words in the bill. In order to do what they thought they had already done the committee now wished, he said, to clarify section 6 by making part of it read as follows: "nothing contained in this act shall apply to or affect any matter concerning the conduct of foreign affairs, the conduct of military or naval operations in time of war or civil insurrection, or the conduct of the Federal Reserve Board, the office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or apply to any matter arising under the internal revenue, customs, patent and trademark, Interstate Commerce Commission, longshoremen or harbor workers' laws or laws relating to Indian lands."

Referring to Mr. Kent's motions, he said: "The difficulty and the danger that I see in the substitute motion which has been made are that it may be seized upon by those who do not desire to see a sane, proper, fair and equitable review of administrative acts. I am quite well assured that the gentleman who offered the substitute had no such intention.

"May I suggest that a wise thing to do . . . is to take Mr. Bastian's resolution and pass it, so that we do have a fair control over the language used in carrying out the opinion of the House expressed not only at this meeting but at previous meetings of the Association. Let us not hamper ourselves or give aid and comfort to those who do not believe in an honest, fair and equitable review of administrative acts."

The Motion to Recommit Prevails

Mr. Kent stated that he was thoroughly in sympathy with Mr. Bastian's resolution, and understood what the committee proposed to do. He was merely trying to get the record straight. The bill as drafted had been supported in the name of the Association, while the draft did not carry out changes recommended in Kansas City. Considerable discussion followed between Mr. Kent and Chairman Morris, Mr. Kent contending that the bill as drafted stood approved by the House because of the exercise of a delegated power by the Board of Governors. Chairman Morris on the other hand took the position that a motion to withdraw the approval given the bill at Kansas City had no relation to the present bill. Two points of order being raised as to Mr. Kent's motion, they were sustained by the Chairman, and the question once more was that of Mr. Bastian's to recommit.

Mr. Sylvester C. Smith, Jr., of New Jersey, stated that he wanted to impress upon the House the seriousness of having a bill supported before Congress in the name of the Association and he thought, therefore, that objections to the present draft should be pointed out. He did not approve of the provisions with reference to review of administrative action by the petition of a person not directly affected. He proposed an amendment to Mr. Bastian's motion so as to require the approval of a bill presented by the committee by the Board of Governors and the House of Delegates (substituting "and" for "or" in the Bastian resolution).

This amendment was accepted by Mr. Bastian and his motion to recommit was thereupon carried.

At this point Mr. J. Weston Allen, of Massachusetts, desired to move that the House did not approve of the bill in the form in which it appeared in the report of the Committee on Administrative Law, but a point of order was raised concerning the propriety of the motion after the bill had been recommitted. The Chair ruled the motion out of order.

Proposal for Incorporation of Certain Principles in Bill Defeated

Mr. Robert Stone of Kansas moved that certain principles be incorporated in the bill:

First, that there should be decentralization of the powers of the administrative court—of the

jurisdiction of the administrative courts created therein.

Second, that the scope of review be enlarged so that the decision of an administrative board shall not be reversed unless it appears that the findings are not supported by a fair preponderance of evidence, a fair preponderance of evidence instead of substantial evidence, so that a court in reviewing the action of an administrative board would be enabled to examine the decision and the evidence upon which the decision was based as fully and freely as it might examine the findings of fact of a master in equity, the master being an expert trier of facts, "while these administrative boards are usually not triers of facts and not governed by rules of evidence."

Third, that exclusive jurisdiction be not given to the Court of Appeals of the District of Columbia in reviewing the rules promulgated by the board, to this extent: that in the case of a controversy involving substantive matters, any party to said controversy may in that controversy challenge the validity or reasonableness of any rule without bringing a separate suit in the District of Columbia for that purpose; and, furthermore, provided that the parties to any such controversy shall not be bound by any proceedings respecting such rules or regulations in any proceeding wherein he is not a party.

Mr. Stone was requested by the Chairman to reduce his resolution to writing, but at this point Mr. Thomson of Illinois suggested that having recommitted the bill it would be futile to attempt to rewrite it at the present time. The committee should be given opportunity, he said, to bring in another bill.

Mr. Douglas Arant, of Alabama, moved to lay Mr. Stone's resolution on the table and this motion was carried.

Report of Committee on Proposals Affecting Supreme Court

The report of the Committee on the Proposals Affecting the Supreme Court and other Courts of the United States, was given by Sylvester C. Smith, Jr., of New Jersey, Chairman.

In supplementing his mimeographed report Mr. Smith stated that the Sub-Committee of the Senate to Consider the Proposals made with Reference to Reorganization of Courts of the United States had made no report, and that none of the proposed amendments to the Constitution affecting the Supreme Court of the United States or the Federal Courts were considered by the Committee in any report to the Senate.

He called attention to the fact that the statement of Mr. Henderson of the Budget Committee on the previous day with reference to the expenditures upon the Court Proposal did not refer to the expenditures of the present committee for the Association year ended June 30, 1938, adding that these had been very small.

The only recommendation of the committee was that it be continued. Mr. Smith said that the committee felt that no one could tell what might be proposed with reference to attacks on the independence of the judiciary, and that the Association should continue to be ready to meet any situation which arose.

The motion to continue the committee with its present powers and such additional powers as might be authorized by the House or the Board of Governors between meetings was carried.

Report on Labor, Employment and Social Security

The next report scheduled was that of the Committee on Labor, Employment and Social Security, Mr. John Lord O'Brian, of Buffalo, New York, Chairman. Chairman Morris stated that it had not been so submitted and that he would entertain a motion to recommit the report to the committee for further study and report to the mid-winter meeting of the House.

A motion to this effect was made and seconded, but Judge Ransom of New York suggested that the report be received and filed as it contained no formal recommendations requiring action by the House. Chairman Morris called attention to a sentence on page 4 of the mimeographed report beginning "We recommend" and suggesting a change of principle in the procedural aspects of the National Labor Relations Act.

In reply Judge Ransom stated that in the first place, what may seem to be a recommendation on page 4 was not in such form that it could possibly be regarded as a matter for definitive action in the House; and, in the second place, that the committee's report was not in such form in any respect as to present a definite recommendation. He added that if the committee had anything on which it wished the House to act, it would either have to set out such proposals separately as recommendations under the rules, or else ask the House to adopt the whole report, and that there was no such proposal.

Chairman Morris explained that in order for progress to be made it seemed to him that the committee should come before the House with a definite recommendation so that the House could act.

At this point Mr. John Kirkland Clark, of New York, seconded Judge Ransom's motion with the addendum that in receiving it and filing it, the House did not in any way undertake to approve the recommendations, but was accepting it as the report of the committee and presuming that the committee would go on to make definite recommendations in proper form. Judge Ransom accepted the understanding, and the motion was carried.

Facilities of Law Library of Congress

The next report was that of the Committee on the Facilities of the Law Library of Congress, John F. Dockweiler of Los Angeles, California, Chairman. In his absence Mr. William R. Vallance of the District of Columbia presented the report.

Mr. Vallance presented the first recommendation of the committee which was that the following resolution be adopted: "RESOLVED: That the American Bar Association urges its members to cooperate with the Congress in the development of the Law Library to the end that it may properly fulfill the function of the nation's principal repository of legal literature and original source material and that the American Bar Association urges the Congress to pass the Sumners Resolution (H.R.19) setting aside the bequest of the late Justice Holmes in a special fund, the income of which will be spent in assembling a collection of works on

jurisprudence to be known as the 'Oliver Wendell Holmes Collection.'"

Chairman Morris stated that a protest against adoption of this resolution had been received by a member of the Association not a member of the House and that the matter had been referred to the Committee on Hearings. Mr. Frank Fleming of Florida, the Chairman of the Committee on Hearings, would be recognized, he said, after a statement from Mr. Arant of Alabama.

Mr. Arant was then recognized and he moved that that portion of the committee's recommendation relating to the disposition of Mr. Justice Holmes' bequest be re-referred to the committee because he understood that in May Congress had enacted a statute or passed a resolution creating a commission to be composed of three Justices of the Supreme Court, three members of the Senate, and three members of the House, to investigate the whole question and make recommendations to Congress.

He was also informed, he said, that a substantial number of members of the Association were interested in another program for the disposition of this bequest, and he felt that these members of the Association should be given an opportunity to have a hearing before the Committee on Facilities of the Law Library of Congress.

This motion was seconded and then Mr. Fleming of the Committee on Hearings stated that the committee had called a meeting to consider the opposition of Robert M. Benjamin, Esq., of New York City, to the report of the Special Committee on Facilities of the Law Library of Congress, Mr. Benjamin representing the twenty-eight lawyers who have been secretaries to Mr. Justice Holmes.

Twenty-Eight of Justice Holmes' Secretaries Express Views on Bequest

Mr. Fleming pointed that, heretofore, the American Bar Association, the bar associations of thirty-five states and also the bar associations of certain counties and cities had recommended the plan suggested by the Association's committee on the Facilities of the Law Library of Congress. However, substantially all of the secretaries of the late Justice Holmes desire that the residuary bequest be utilized to provide one or more annual fellowships for government employees, presumably lawyers in the field of government public law and administration, and Mr. J. G. Palfrey, of Boston, executor of the will of Justice Holmes, concurs with the secretaries as to the Fellowships and also in opposing the use of the fund for the Library of Congress.

Substantially all of the secretaries of Justice Holmes recommend, Mr. Fleming said, that the American Bar Association take no action at this time, but that the disposition of the residuary bequest of the late Mr. Justice Holmes, without recommendation by the American Bar Association, be left to the committee to be appointed under the Joint Resolution H. J. R. 703 of the Seventy-Fifth Congress.

The recommendation of the Committee on Hearings was that, notwithstanding the opposition of the secretaries of the late Mr. Justice Holmes, the report of the Special Committee on the Facilities of the Law Library of Congress to this Association should be adopted. It realized, of course, that what the Association has done and what the bar associations of thirty-five states have done is by way of recommendation only and that these recommendations will all be considered by the Congressional Committee.

Motion to Recommit Debated

Mr. Buchanan, of Pennsylvania, supported Mr. Arant's motion to recommit the matter to the Committee on the Facilities of the Law Library of Congress in order that a hearing might be had for those who desired a different disposition of the bequest from that provided for in the resolution. He stated that it would be most unfortunate to have the reasons which the secretaries of Justice

Holmes would submit opposed by resolutions urging a different disposition adopted by this Association which, on account of its numbers, might be deemed to overweigh even valid reasons.

Judge Ransom at this point said that he did not believe the House should repudiate the action which had been taken by some thirty-five state associations as well as by the Association itself, and added: "The late Mr. Justice Holmes was adept in the precise use of words. If Mr. Justice Holmes had desired that his former secretaries should control the disposition of his bequest, he would have found language to fit that purpose. Instead of that, he left that determination to the will of the Congress of the United States, and the organized bar of this country has made a suitable recommendation in which we have already concurred. I do not think it would be dignified, I do not think it is necessary, for this House now to go back on that. For those reasons, briefly, I support the recommendation of the Committee on Hearings."

Objections to Immediate Action

Mr. Frank W. Grinnell, of Massachusetts, said that it would be a mistake to adhere to previous action when a new plan was brought forward without giving the proponents of the new plan an opportunity to be heard. He concluded: "Let's wait and find out what the Judges of the Supreme Court, his intimate friends, and the other men who consider it in view of the latest information have to say about this subject."

Mr. Arant then observed that he did not intend by his motion to repudiate what the Association or some of the state bar associations have already done. "My purpose is in line with what the gentleman from Massachusetts has just said, namely, that I think these gentlemen who propose a new plan should be given an opportunity to be heard before the committee which made the report, namely, the Committee on Facilities of the Law Library of Congress. I think that they are entitled to be heard on that subject, and the motion has nothing to do with the merits of the question."

Mr. Vallance in defense of the recommendation of his committee concluded the argument by calling attention to the large number of bar associations that had endorsed their stand. The collection of books, he stated, although it would be in the Library of Congress at Washington, would be available to the lawyers thoughout the states for their use upon the request of a library, a public library, a law library, or a bar association library. "These rare books can be sent out to any one of you throughout the states and, therefore, will furnish a fund on which you may draw for helping out in difficult cases that may come before you where you want them."

The House then voted on Mr. Arant's motion to refer the recommendation to the committee. This motion was lost, and the House approved the committee's recommendation.

Without debate the other two recommendations of the committee were approved. The first was that the committee should be continued and the other was that the committee be authorized to continue its cooperation with the appropriate governmental agencies in furthering the development of the Law Library of Congress.

Committee on Ways and Means Shows Need for Increased Income or Close Watch on Expenditures

Mr. Carl B. Rix of Wisconsin was called upon to present the report of the Committee on Ways and Means. He introduced his report by stating that his committee was charged with the duty of taking up the slack in the revenues caused by events of the last two years, attributable to the increased and expanding activities of this organization, and that the situation had been corrected as indicated by the reports of the President, the Treasurer and of the Chairman of the Budget Committee. The Association had passed through a critical period in the history of the organization with no inroads whatsoever upon the surplus or the invested funds of the organization, but, he added, expanding activities mean expenditures of increased money.

"To these expanding activities," Mr. Rix continued, "must be added some plan of getting out the work of the organization throughout the country to the local and state associations. Some plan must be devised to sell the goods of this organization. So far as I know, it is the only concern which you gentlemen represent which doesn't have a selling force. That means that we must ask your careful consideration and study of the current revenues of this organization or necessary work will have to be curtailed.

"During the past year the committee has devoted its attention particularly to securing sustaining memberships. Owing to existing conditions, we have not forced or pressed it but in spite of that fact, four hundred and ten sustaining memberships are now on our books, with an added revenue of $9,900. Some work would have been cut out if we hadn't done that.

"Now, it is inconceivable to the members of your committee that all reasonable needs of this organization will not be met. The question that I want you to answer for yourselves is whether or not we are evaluating our privileges too cheaply. Certainly it would seem perfectly evident that out of this large, responsible organization we can secure at least two thousand sustaining memberships at $25 a year each. With that added revenue of $50,000, every reasonable need of this organization can be met.

"It is only through activities that we get memberships. We will reach a point through these expanding activities and through the new memberships when this plan can be abandoned, but all I have to put to you gentlemen is this, that every expanding job of a corporation means increased capital until the dividends begin to flow back to it.

A Little Intimation for Consideration

"I am trying to put this to you in such a way that you will be responsive to the requests of the Ways and Means Committee of the next year in the consideration of this matter."

At this point Mr. John Kirkland Clark, of New York, asked that Mr. Murray Seasongood be allowed to present the report of the Municipal Law Section, since it was necessary for him to leave town.

Chairman Morris stated that without reference to the particular motion he would like to say that

on several occasions he had been asked by section chairmen and committee chairmen to advance their reports because they had to go away and that uniformly he had said that, unless the House so ordered, there would be no change in the calendar for the reason that certain people have calculated on an attendance at a time when they thought the particular reports calendared were going to come up. He added that while the calendar was never any guarantee of performance, nevertheless, if they began to depart from it in order to meet the convenience of the individual, the House would find itself so confused that the calendar would amount to little.

Before putting Mr. Clark's motion the Chairman asked the House to vote on the continuance of the Ways and Means Committee, which was so ordered.

Prior to putting the motion to make the report of the Municipal Law Section a special order of business the Chairman inquired if the Committee of the House assigned the duty was ready to report with reference to the recommendations of the section. Mr. Allen of Massachusetts stated that the committee was ready, there being only one recommendation in the report of the section. After this the House voted to hear the report of the Municipal Law Section.

Municipal Law Section Reports

Mr. Seasongood came to the platform and thanked the House for its indulgence. He referred to the recommendation of his section appearing at page 244 of the Advance Program. The sense of the resolution was that the bar should uphold the merit system in public employments (national, state and local) and should demonstrate the applicability of the system to legal positions particularly.

Mr. Seasongood stated that this matter had been referred to a special committee of the section, which had unanimously adopted the recommendation and resolution. It had likewise received the unanimous support of the officers and members of the section. He declared also that President Vanderbilt had given the resolution his blessing and had said that he regarded it as one of the important things for the Association to espouse.

Chairman Morris called for the report of the House Committee handling the matter. Mr. Allen, the chairman, stated that his committee approved of it in the form in which it was submitted. The motion was seconded, put to a vote, and carried without debate.

The Chairman then announced that no business transacted by the Assembly at its morning session required action by the House.

The next report on the calendar was that of the Committee on Legal Aid Work. It was received and filed without discussion since it contained no recommendations requiring action. The next report was that of the Committee on Legal Clinics, Mr. Karl N. Llewellyn of New York, Chairman. The Chair put the motion on the recommendation that the committee be continued, and it carried.

Noteworthy Report by Committee on Economic Condition of the Bar

An outstandingly significant event was the report of the Committee on the Economic Condition of the Bar, of which Dean Lloyd K. Garrison, of Wisconsin, has been Chairman. In his absence on official public duties in Europe, Mr. John Kirkland Clark, of New York, presented the report for the committee. This report was in three parts; one in the Advance Program, page 182, a separate printed report of seven pages and a 230 page manual entitled "The Economics of the Legal Profession." The nature of this very notable manual is indicated by the statement on its front cover which says that it is "designed principally for the use of state, local and junior Bar Associations, describing the results of the Bar surveys which have been made to date; the chief proposals which have been advanced for improving the economic condition of the profession and increasing its capacity for usefulness; and the methods and forms which were used in the several surveys."

Mr. Clark paid high tribute to Chairman Lloyd K. Garrison in connection with his remarks concerning the manual. This work, he said, represented almost entirely a one-man performance by Dean Garrison, who had spent months in its preparation. Turning to the manual, he stated that it contained a thorough analysis and comparison of all that had been done in the way of a study of the facts as to how many lawyers there are, how much legal business there is and how much of that business is being done by lawyers. It was the hope of the committee, Mr. Clark said, that the work would inspire state and local associations to assist in the work of the American Bar Association's committee. It

TRACY H. DUNCAN

Chairman, Finance Committee of the Cleveland Bar Association for Annual Meeting

was their desire, therefore, that copies (of which there were only a limited number) should be placed in the hands of members of committees in the state and local associations, "so that work may be effectively done in various parts of the country to find out what are the facts with regard to the points which we are covering."

Bar Associations Asked to Appoint Special Committees

Mr. Clark next presented the recommendations of the committee (which appeared in the separate printed report). The first was that the state bar associations and the principal local and junior bar associations be asked to appoint special committees on the economic condition of the bar to consider the feasibility of conducting surveys in the light of the material assembled by the committee in the manual and to consider the measures therein discussed to improve the economic status of lawyers and such other measures as may commend themselves. This recommendation was approved by the House without discussion.

The second recommendation was that each of these committees when appointed be urged to make a report of its findings and recommendations and forward them to the Committee of the American Bar Association so that the material might be made generally available. This was likewise approved without debate as was the third and last recommendation that the committee be continued for another year with certain specific purposes—to encourage and assist in the making of these surveys; to assemble the results and report to the Association; and to continue its collaboration with the Department of Commerce pursuant to the resolution adopted at the last annual meeting of this Association in securing as much nationwide statistical information about the legal profession as possible.

The next two reports, those of the Committees on Professional Ethics and Grievances and on Unauthorized Practice of the Law, did not contain any recommendations, and in each instance the report was received and filed.

Progress Report on Survey of Sections and Committees

The next matter was the report of the Committee on Survey of Work of Sections and Committees. Mr. John H. Voorhees of South Dakota, Chairman, presented the report. He stated that it contained certain recommendations which had been revised after they had been submitted to the Board of Governors.

These recommendations, as revised, were then taken up for consideration by the House. The first one provided that, if a Section on Commercial Law were established, the work of the present Standing Committee on Commercial Law and Bankruptcy, on the organization of the section, should be transferred to the section and the committee abolished.

Chairman Morris observed that since the Section on Commercial Law had been created by the order of the House the recommendation amounted to a resolution to transfer the work of the committee and to abolish it.

Mr. Crump interposed an objection to the procedure. He stated that the abolition of the committee required an amendment to the by-laws, and that the resolution should be amended so as to refer that part of the resolution to the Rules and Calendar Committee.

A question from Mr. Morford of Delaware was interpolated at this point. He wished to know if the new Commercial Law Section was to concern itself with bankruptcy matters. This was answered in the affirmative by Mr. Voorhees.

The recommendation of the committee was then divided into two parts in the first of which it was resolved that the work of the committee be transferred to the section. After this had carried a motion instructing the Rules and Calendar Committee to prepare the necessary action to amend the by-laws to conform with the action just taken was also adopted.

Members to Be Sounded on Creation of Banking and Other Sections

The second recommendation was that the committee take steps to ascertain the extent and the character of the desire among the members of the Association for the establishment of Sections on Administrative Law, Banking Law (or Banking and Trust Law) and Tax Law. This was approved without debate.

The third and final recommendation was that the committee be continued with instructions to complete its work, if possible, during the coming Association year, that it report from time to time during the year to the Board of Governors for its information and in order that the Board may make such suggestions upon such reports as it may see fit; that the Committee make a further report to the House of Delegates at the 1939 annual meeting of the Association, and that the Board of Governors in connection with the said report transmit to the House of Delegates its comments and recommendations thereon.

Mr. Beardsley, of California, asked if it would be practicable for the committee to report to the House at the mid-winter meeting. Mr. Voorhees stated that it was doubtful if a final report could be made by that time in view of the fact that the committee was instructed to ascertain the sentiment of the members. An amendment to the recommendation so as to call for a progress report from the committee at the mid-winter meeting was agreed upon and as amended the third recommendation was approved.

The report of the Standing Committee on Noteworthy Changes in Statute Law, described by Chairman Morris as a most complete and scholarly report, was received and filed. It contained no recommendations.

Commerce Committee Reports

The report of the Committee on Commerce was given by Mr. Harold J. Gallagher of New York, Chairman.

Mr. Gallagher presented the recommendations of his committee for consideration by the House. They appear at page 66 of the Advance Program. The first would have the Association urge the enactment of a Federal Sales Act in substantially the form of H. R. 7824 introduced in the 75th Congress, and direct the Committee on Commerce to use its efforts to secure passage of the bill. A concluding phrase—"with such further

amendments as the hearings thereon may show to be proper"—was withdrawn at the suggestion of the Board of Governors.

The resolution was adopted.

The second resolution which would have the Association authorize the committee to aid and cooperate with any commission or governmental body undertaking a survey of the anti-trust laws and to urge in behalf of the Association that the principles respecting anti-trust legislation approved at the 1935 meeting of the Association be incorporated in any legislation recommended to the Congress, was adopted.

The third resolution in the report indicating disapproval of the Borah-O'Mahoney bill requiring federal licensing of corporations in interstate commerce was withdrawn, Mr. Gallagher explained, because a commission had been created by the Congress to investigate and report on anti-trust legislation.

As to the last resolution, which asked disapproval of the enactment of the bill (H. R. 10250) to amend the Federal Employers' Liability Act by abolishing the defense of assumed risk in cases where injury or death results from negligence of the employer, the Board of Governors had suggested possible conflict with a resolution of the Committee on Jurisprudence and Law Reform urging disapproval of H. R. 5755 purporting to amend the Federal Employers' Liability Act.

Chairman Morris inquired if the Chairman of the Committee had had opportunity to consider this matter, and Mr. Gallagher replied that he had but had not reached any conclusion as a result of his conference with Mr. Pogue, the chairman of the other committee. However, he said, a subsequent investigation of the facts had revealed that the bill referred to in the report of the Jurisprudence and Law Reform Committee was dead and that no action on the part of the Association was required.

The bill mentioned in his report (H. R. 10250) had been favorably reported to the House of Representatives in April in this year. It would have the effect of imposing on the railroads, he said, a most unfair liability by creating a Workmen's Compensation Act with no ceiling as to damages.

It was suggested that the resolution should express disapproval of "the provisions of" a certain bill rather than referring to it by number only, since all legislation died at the end of the session. This was accepted and as amended the resolution was adopted by the House.

Committee on Cooperation with Press and Radio

The next report was that of the Committee on Cooperation between the Press, Radio and Bar as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings. Before taking up its recommendation as amended by the Assembly, Mr. Giles J. Patterson, of Florida, for the committee in the absence of Chairman Merritt Lane, said that the first recommendation, which related to the appointment of a standing committee, had been withdrawn because of the fact that it would be necessary first to amend the Constitution and By-laws. In lieu of that, he stated, the committee now proposed (and the Assembly had authorized) the continuance of the committee with the powers expressed in the second resolution.

The change in the second recommendation had been offered by Dean H. W. Arant and Mr. Robert T. McCracken of the Committee on Professional Ethics and Grievances, Mr. Patterson said, and had been accepted by the committee. The recommendation as amended read as follows: "That it shall be the duty of such committee to continue the work of the present Special Committee on Cooperation Between Press, Radio and Bar, as to the publicity interfering with fair trial of judicial and quasi-judicial proceedings, consider the matter of publicity with respect to judicial and quasi-judicial proceedings, consider all such pertinent matters as may be involved with respect to freedom of press and the bar, take such steps as may be deemed proper and advisable to bring about compliance with the position taken by this Association from time to time with respect to the preceding subject matters; [the amendment begins] except that it shall not express an opinion upon any question of professional or judicial ethics that may arise in connection with any of the foregoing matters nor take any step to bring about compliance by any member, lawyer or judge, of this Association, with any attitude of this Association that has been expressed in a canon of ethics [the end of the amendment]; suggest to local bar associations the appointment of continuing committees with power with respect to the preceding matters; cooperate with such local committees of the Bar and with such committees of associations of, or such representatives as may be appointed by or as may act for, the press, radio or other mediums of publicity."

The two recommendations of the committee, as amended, were approved.

Mr. John Kirkland Clark suggested that before the committee left it might be proper to recommend the drafting of a proper amendment to the By-laws so as to create a standing committee, and he made this in the form of a motion directing the Committee on Rules and Calendar to act.

Mr. Sylvester C. Smith, Jr., explained that the difficulty with the standing committee provision is that the work of standing committees is frequently not as great as the result of the work of special committees. In this connection, he said, "You immediately limit the scope of work which a standing committee may take up for the duties are fixed in the By-laws. Until we have had some experience as to what work ought to be included in the standing committee's duties, it is much better to retain the flexibility of the special committee."

Mr. Clark, with the agreement of the chairman of the committee, withdrew his motion.

Committee on Duplication of Legal Publications

The next order of business was the report of the Committee to Consider and Report as to Duplication of Legal Publications, Eldon R. James, Chairman. In Mr. James' absence, Mr. Clarence R. Rolloff, of Minnesota, was given permission to present the report.

Mr. Rolloff stated that the substance of the committee report had been gone over at the Assembly program in the morning, but there were two recommendations for consideration. One was the matter of having the committee continued as a special committee, and the other one was that

there should be continued cooperation with similar committees of the Association of American Law Schools and the American Association of Law Libraries.

The first resolution continuing the committee was approved.

The Chair then requested that the second recommendation be read, as it was not in the same form as that printed in the Advance Program. Mr. Rolloff stated that the recommendation was that the committee be authorized to join with the Association of American Law Schools and the American Association of Law Libraries and such other organizations having similar interests in forming the committee contemplated in the statement made by a Joint Committee of the American Law School Association and the American Law Library Association. That statement in substance was that it was the sense of the meeting that a permanent committee or body should be established, composed of representatives of those three bodies, to continue the study of the problems involved and make recommendations as to the several organizations.

Mr. Grinnell of Massachusetts noted that in the first printed recommendation (for a standing committee) the title was changed from "Duplication of Legal Publications" to "Legal Publications and Law Reporting." He declared that he believed that the report dealt with one of the major problems of the profession indefinitely in the future, and the sooner work was started on it the better because it involved every lawyer and every law library, every publisher, and the future development of the law itself. Accordingly, he wished to know whether the title should be broadened to "Legal Publications and Legal Reporting," if the committee so wished it.

Mr. Grinnell then made a motion to broaden the title of the committee. This was approved by the House, after which it adjourned.

Fourth Session of House of Delegates — House Approves Amendment to Standards for Approved Law Schools—Committee on Law Lists—Procedure As to Uniform State Laws Reported by Commissioners—Other Reports

LEGAL Education Section's recommendation for amendment to Association Standards regarding law schools making application to be placed on the Association's approved list stirs lively debate. Some members maintain that it would confer too great a discretion on the Council of the Section. Others insist that it is necessary in order to keep schools from getting on the approved list by a mere "paper compliance" with the Association standards. The committee's recommendation that it be a school which, in the judgment of the Council, "possesses reasonably adequate facilities and maintains a sound educational policy," with the provision that any law school unfavorably affected by the Council's action shall have a right to appeal to the House, is finally adopted. House approves report of the Committee on Law Lists, which conveys the pleasing information that its activities have been wholly self-sustaining. Certain resolutions presented by the Section on International and Comparative Law rouse discussion as to propriety of Association action in the premises and are laid on the table. Question of procedure in House with reference to measures approved by Commissioners on Uniform State Laws is lengthily debated and a clarification finally arrived at. Other important reports are acted on. Officers are elected.

THE fourth session of the House of Delegates was called to order by Chairman Morris. He announced that the House would take as the unfinished business the question of approving the resolution that the Special Committee to Study and Report on the Duplication of Legal Publications be authorized to join with the Association of American Law Schools, the American Association of Law Libraries, and other organizations having similar interests, in forming the committee contemplated in the statement and resolutions adopted at the meeting of the committee held at Chicago on December 30, 1937, and set forth in its report. The resolution had been overlooked at the previous sessions. Adopted.

The report of the Committee on Law Lists was next in order. Judge Atwood of Missouri, Chairman, stated that it had been submitted to the Board of Governors on May 11 this year, and had been referred by the Board of Governors to the Assembly. The Chairman had at some length explained the powers and objectives of the committee, the activities in which they have been engaged since its creation, and the present stage, as well as the modus operandi of the work, to that body. Owing to the condition of the schedule, he took it that the House did not care for the Chairman to go into details. Some delegates had no doubt heard the presentation yesterday. The Assembly had approved the only recommendation made, and that was that the committee be continued for the ensuing year.

The House would perhaps be interested to know that, pursuant to the Evans Committee report adopted by the House last fall, the expense of the committee's work has been met entirely by the Law Lists which have sought approval; in other words, the work is self-sustaining and bids fair to continue to be. It had been for some weeks the committee's hope and desire to present to the Bar a roster of lists conditionally approved. In the effort to make that roster and that announcement as nearly contemporaneous as possible, and yet at the same time give consideration to all data that had come to hand, the committee had been delayed, but he was sure that the roster of lists conditionally approved to date would be forthcoming during the

day. (This list was published in the August issue of the JOURNAL.)

Chairman Atwood moved that the Special Committee on Law Lists be continued for the ensuing year. Chairman Morris stated, in connection with the motion, that the following comment had come from the Board of Governors in transmitting the report to the House: "It is the sense of the Board that the Law Lists Committee should be self-sustaining." The motion was adopted.

Report of Section on Legal Education Stirs Debate

The report of the Section on Legal Education and Admission to the Bar was presented by Mr. Robert G. Storey of Texas, Chairman. He stated that the first resolution, as printed in the section report in the Advance Program, had been submitted to the Board of Governors and returned with certain comments. Thereupon a substitute resolution had been submitted to the section and adopted. It had later been submitted to the Committee of the House headed by Mr. Hull.

The original resolution relating to the standards of law schools, provided that the Association standards be amended by adding the following: "It shall be a school which possesses reasonably adequate facilities and which is conducted in accordance with such standards and practices as the Council of Legal Education and Admissions to the Bar deems essential to the maintenance of a sound educational policy." Chairman Storey read the proposed substitute as follows:

"It shall be a school which in the judgment of the Council of Legal Education and Admissions to the Bar possesses reasonably adequate facilities and maintains a sound educational policy, provided, however, that any decision of the Council in these respects shall be subject to review by the House of Delegates on the petition of any law school adversely affected."

"The reason that the section submits this resolution," the Chairman continued, "is that very frequently a law school meets the technical or paper standards promulgated by the American Bar Association, for example, a minimum of three full-time professors—but it may be that those professors, while having the necessary degrees, are not good teachers and do not teach good law. So in this way, the Council desires the opportunity to pass upon personnel as well as minimum numbers

"One other example and then I am through. In Louisiana a few years ago, because of the political situation, it was necessary to withdraw the approval by the American Bar Association of a law school. They met the technical requirements but they did not meet the spirit of the requirements, so this resolution is presented to cover the spirit of the requirements." He moved the adoption of the section's substitute resolution.

Comment of Board of Governors

Chairman Morris here read the comment from the Board of Governors which accompanied transmittal of the original report to the House:

"The Board of Governors views sympathetically the desire of the Section to have all approved law schools satisfy in reality and not merely in form the declared requisites. Yet the Board is of the opinion that the reality ought to be attained by specific changes in the wording of the requirements and not through an elastic increase in the powers given to those who apply the rules, and that it will be more desirable to amend and add to the rules from time to time, at the expense, perhaps, of instantaneous efficiency, than to subscribe to a principle of the use, however efficient, of personal choice."

Discussion was opened by Mr. Nathan W. MacChesney of Illinois. He thought the change in the proposed recommendation an improvement, but, personally, he viewed with a good deal of apprehension the centering in any body of the right, on a discretionary basis, to control educational policies. That has been discussed in a very broad way in connection with general education in this country. There was a general feeling upon the part of educators that no discretionary control, for instance, should be lodged in superintendents of schools of various states, nor in a department of education of the United States.

He regarded this step as in the wrong direction. It seemed to him that if such a power was to be given, it should be upon the basis of specific rules laid down in advance, which could be debated and agreed to, and the objections to which could be presented and heard and weighed. He hoped that the resolution would not be passed.

Urges Giving Council the Discretionary Power Asked For

Chairman Morris recognized Mr. Hull of Detroit, Chairman of the House Committee to consider the report of the Section. Mr. Hull stated that, on behalf of the committee, he would merely say that it had considered the report, the resolution as first proposed by the section, and the modification made after receiving the report of the Board of Governors, and his committee recommended the adoption of the resolution. Personally, he was very strongly of the opinion that you cannot by rule of thumb or arbitrary rules or any other way pass upon the efficiency of any kind of educational system.

He was satisfied that unless some discretion was left to people who are charged with the responsibility of determining the results obtained, there could never be a satisfactory system of checking upon our law schools, whether they are now approved or hereafter make application to be approved. There was the safeguard that any aggrieved school might come before this body and specify every detail that the House called upon it to specify, and that the House could then pass upon the recommendations. He thought it the only practical way of getting some real test and requiring absolute compliance in spirit with the standards. He hoped the resolution would pass.

Mr. William L. Ransom of New York inquired whether the resolution as now offered was understood to provide for a determination of the matter by somebody in the Association other than the House, subject to some right of petition and review by the House, or did the final determination rest in the House? Mr. Ransom then declared that it seemed to him highly unsound to delegate to any subordinate body or subdivision of the Association power to make a discretionary determination which placed upon anything the seal of the approval of this Association. That should be given, in his judgment, only by this House and only upon

the recommendation of the section. The idea of making a section, whether it be Legal Education or any other, to any substantial extent an autonomous body, seemed to him unsound in principle. He thought the House should be very careful in this respect. He had understood that all affirmative actions of the Section or its Council, in recommending approval of law schools in the name of the Association, came to the House for final action.

Mr. Clark Urges More Flexible Application of Standards

Mr. Clark, of New York, replied that under the Constitution as it stands today, and has stood ever since the Section and Council were organized, and under the standards as they are, the Council has passed upon qualifications of law schools and is continuing to do so without even the appeal which is contained in this proposed added paragraph. "We have a series of standards which are like the Commandments in the Old Testament," he added. "They are rigid, they are limited. We are trying to breathe into these standards the spirit which has actuated the Association and the spirit which has actuated the work of the Council by seeing to it that the mere fact that there are three full-time professors (who may be young fellows just out of law school) is not enough, but that they must be adequately equipped, and that schools must meet in spirit as well as in figures the requirements which are set forth.

"In the light of an experience which dates back over twelve years, may I say that at all times the Council has been composed in largest part of practicing lawyers. You have heard in the House today three of those who in the past ten years have been chairmen. You can tell from the men who have been there that there is no danger of theory or of wild-eyed notions controlling that body, but it is essential for the proper conduct of its work that it should be given this small, reasonable degree of discretionary power, subject to review by this House."

Provisions of Constitution as to Action in Name of the Association

Mr. Ransom asked if the preceding speaker could call to the attention of the House any provision of the present Constitution which gave the Section of Legal Education any power to make such a determination as he referred to—whether, in fact, there was any provision of the Constitution on the subject which gave the section any power except this: "That no report, recommendation or other action of any section shall be considered as the action of the Association unless and until the same has been approved or authorized by the House of Delegates and the Board of Governors." Mr. Clark replied that so far as he was aware, no question had been raised hitherto, but ever since the adoption of the Constitution the section had been receiving reports of the Council which had passed upon law schools and they had been accepted in due course without any formal action by any other body.

Mr. English, of Pennsylvania, thought that in this apprehension with regard to power, we were apt to lose sight of the essential usefulness of the proposal coming from the section. He would call the attention of the House to the fact that we have in the United States today something like 185 law schools only 98 of which have met the standards prescribed by the American Bar Association. It was significant that only between 40 and 45 per cent of those who take the examinations in the first instance throughout the country are successful in passing them.

Something Wrong with the Educational Picture

Now there was something fundamentally wrong with that picture, he said. "As we see it on the Council of Legal Education, the difficulty primarily rests with the unfortunate circumstance that so many of these unapproved institutions are commercial in their nature. They are a dumping ground for those who fail to pass their examinations in the superior institutions, they give them an opportunity to repeat their course and students are allowed to remain as long as their money lasts."

"The purpose of this proposal," he continued, "is not to repose in the Council of Legal Education an authority which they may arbitrarily exercise. It is impossible precisely to define the variety of circumstances which would satisfy any fair body that in a large number of these institutions the teaching standards are of that quality which will make it reasonably certain that students who go through there have a Chinaman's chance of passing a bar examination."

Mr. Sidney Teiser, of Oregon, said that the House had heard yesterday the eminent former Secretary of the Interior propose and expound the report of the Committee on Administrative Law. In that report and in his comments thereon it was very apparent that the objective of that body was to oppose any discretionary power in any administrative board or agency. Now, it appears that when a section of this Association is the administrative board in question, we drift away from that principle. The resolution seemed to him to belie our position taken here in that regard. He therefore urged opposition to the recommendation of the committee because it tended to place in the Section that discretion which this Association was not willing to place in others.

Mr. Stanley Supports Resolution

Mr. W. E. Stanley, of Kansas, felt that there was a little bit of misapprehension as to what the effect of this so-called vesting of discretionary power in the Council of Legal Education would be. Ever since the rules were promulgated by this Association, that same discretionary power had been vested in the Council on Legal Education and had been exercised from the time the Council started to function.

Referring to the work of the Council in this connection, he said: "We have disapproved school after school, year after year, until we got them up to the standard where we could approve them, and then we brought them up to the Association and asked this Association to approve the action of the Council in granting the approval to that school. But how about the disapproval? It has taken work with these schools, it has taken conferences with these schools, it has taken all sorts of work with Bar Associations, to get those schools to come up to the standard.

"We have this situation confronting us: A school comes in and says, 'We have the number of teachers, full-time teachers, that you prescribe. We have the number of books in the library.' And

yet here is what we frequently find, that many boys in this country pay their own money to these schools, some of them, and get absolutely nothing for it. They go up against the bar examining boards and are flunked. We have repeaters as many as four and five times. They have spent their money. We find a school that may comply with these paper standards and yet they do not flunk a man. No man is dismissed because of the quality of his work as long as they can get his money and grind him out.

A Question of Fairness to Law Students

"They take his money and leave it for the bar examining board to separate him from the class that ultimately will practice law. He has spent his money. Is it fair to that man? Is it fair to the young man in this country to let him spend his money and for the Council on Legal Education to give approval to a school that it knows, after careful investigation, is not furnishing an education to him? Where will you consider this whole problem unless you vest it, a very technical proposition, in the hands of some group to determine whether or not that boy in that particular institution is being given an education that fits him to become a lawyer?

"We have gone farther in this particular resolution. We have done this: although at the present time no school that is disapproved has had the right to come before this body, we provide here that if any school feels aggrieved, feels that the Council on Legal Education has done it an injustice in withholding its approval, and it is willing to put its record before this House of Delegates for consideration, the House of Delegates can overrule the Council in that matter. Does this House want to consider all the technical matters connected with legal education, connected with faculty, connected with the character of students? Does this body want to have to consider all of those details which can be determined only by long conferences, by long hours of work, in the consideration of whether or not that school ought to be approved?

"I submit to you, gentlemen, if you intend to bring the standards of legal education in this country up to a point where they will provide a fair education for the boy that pays his money, that you have got to entrust to a group the responsibility of determining whether, upon the record of that school, it is giving that particular kind of education which this Association wants to provide."

A Case Where the Power Was Beneficially Exercised

Dean Thomas C. Kimbrough, of Mississippi, could not understand why any member of the House should be afraid to place the power described by the resolution in the hands of the Council on Legal Education. As had been so well stated by the gentleman from Kansas, this discretionary power had been used, and necessarily had to be used and exercised by the Council on Legal Education in the past. He spoke with some feeling on this matter because in his own school in Mississippi they had had some trouble in getting the authorities of the State to furnish the things needed to bring it up to the standards required by the Council; but they were enabled finally to meet those requirements through the encouragement of the Council on Legal Education, whose agents came and talked the matters over with those in charge of the school. That was the exercise of a discretionary power and the results were wholly beneficial.

"Now, we are simply giving the Council in writing a power which they have always had and which they have always exercised. If they go haywire, if they do a thing that ought not to be done, any school that is aggrieved by it can come to this body and ask for relief. Why then should any wrong be done? Why be afraid of this thing? There is nothing to be afraid of; it is a legitimate thing, and the resolution, according to my idea, ought to be adopted by this House."

Mr. A. G. C. Bierer, Jr., of Oklahoma, said that "One of the objections regularly made against our profession by the laity is that we devote our attention to form and overlook the substance. This Association, since about 1921, has prescribed the standards for legal education. If we are not to have in this Association a body competent to pass upon something more than merely whether the rules have been met, a body competent to do something more than count law books in a library and count the teachers, then we are not really qualified to invade that field at all. We must acknowledge and we must sustain and urge that we have in our Council of Legal Education a body qualified to pass upon at least the essentials of the standards of scholarship in these law schools. We must make our recommendations on these standards mean something.

"I submit that there must be some room for discretion on the part of the Council. I urge that this resolution, as it comes up in its broad and liberal form leaving a review open by the House upon objections to the work of the body which we have, a body especially fitted and competent to pass upon the matter, be adopted.

Georgia Supports Proposal

Mr. John M. Slaton, of Georgia, said he happened to be chairman of the Board of Law Examiners of the State, and by reason of that fact had considerable experience in this matter of examinations. He wanted to agree with what the gentleman from Kansas said. He knew of institutions where twelve applicants had been passed by the institutions that educated them, and only two of them had passed the examination. If the Council were given the opportunity of reviewing what those institutions do and of applying an effectual test he thought it would do a great deal of good. He thought that the House of Delegates should give the flexible power to the Council which was proposed by this resolution.

Mr. Clark, of New York, desired to make a correction in an answer which he had given to Judge Ransom. It was a fact that up to last year the action of the Council had always been final in approval, but on the point being raised which Judge Ransom had raised here, the approval of schools since the commencement of this year had been submitted and is now being submitted to the Board of Governors or to the House.

Chairman Storey wished to answer briefly the suggestions made by General MacChesney, Judge Ransom and Mr. Teiser. To begin with, the Council certainly did not covet the exercise of any arbitrary power, but it was willing to assume whatever

responsibility was delegated to the Council. Replying to General MacChesney, the Association has a responsibility to define and determine what is sound educational policy. Was this House going to sit and hear every application of a law school for approval? There were many of them. They were simply asking that the House vest in the Council the right to find the facts—that was all. Under the procedure now, every affirmative action taken is subject to review. Then if the Council turns down a law school, the present resolution provides a specific mode of appeal.

Replying to Judge Ransom's question about constitutional authority, as Mr. Clark had said, prior to last year that was true, but now every approval is submitted to this House, "and I have one a little later on for your specific approval. Moreover, the disapproval that is being considered here is made subject to review by the House. If you do not provide this machinery, you must assume it, because the American Bar Association is not going to take a little law school, maybe with twenty-five students, that some rich man wants to finance, and which has some three professors and some seventy-five hundred volumes and meets the paper standards, and approve it unless it has a sound educational policy. . ."

Section Resolutions Finally Adopted

The resolution, as amended, was put to a vote and adopted. Two other resolutions—one that the Association recommends to all State and Local Bar Association that they set up courses for practicing lawyers on the new rules of procedure, and the other, recommending to such associations a program of legal institutes and practicing law courses similar to the one conducted at Cleveland by Professor Leach, were adopted without discussion. Another resolution recommending the Willamette College of Salem, Oregon, for provisional approval by the Association, was also adopted.

Mr. Henry Upson Sims, of Alabama, Chairman of the Special Committee on the Acquisition of Portraits of Former Associate Justices of the Supreme Court of the United States, stated that the report, as printed in the Advance Program, recommended that the committee be continued because it seemed certain at that time that the money necessary to begin the work would be provided by Congress. However, after the report was printed it became apparent that political questions had entered into the matter and it was unwise for the American Bar Association to become involved in them. He had not been able to get a meeting of the committee, but his personal opinion was that the Association would do well to drop the committee for the present time. Motion to that effect was carried.

Mr. Carl V. Essery, of Michigan, Chairman of the Section on Bar Organization Activities, presented its report. A preliminary report had been printed in the Advance Program, but on Monday the section had adopted five resolutions for submission to the House. In connection with these resolutions, he stated that the section conceived its functions to be to study the machinery of Bar organization and methods of doing Bar work, to serve as a clearing house in respect to these subjects, to furnish a forum for local Bar Associations, and to sell the American Bar Association to these local Bar Associations and their members.

Resolutions from Section on Bar Organization Activities

The first resolution was that the House approve the section's proposal to make an award of merit to the State Bar Association which had performed during the current year the most outstanding and constructive work, and a like award to a local Bar Association on the same ground; such awards to be under rules approved by the House of Delegates or the Board of Governors and to be without monetary value. The resolution was approved.

The next resolution requested that the House approve the proposal to arrange annual regional conferences on Bar Association work, using the Federal Judicial Circuits or such other groups of states as the section may deem most suitable for such conferences. Approved. Another resolution requested the House to approve the proposal for arranging and securing direct and accredited representation by each local Bar Association in the section, in so far as that is possible; such plan not to encroach on the powers and functions of the House of Delegates. Approved.

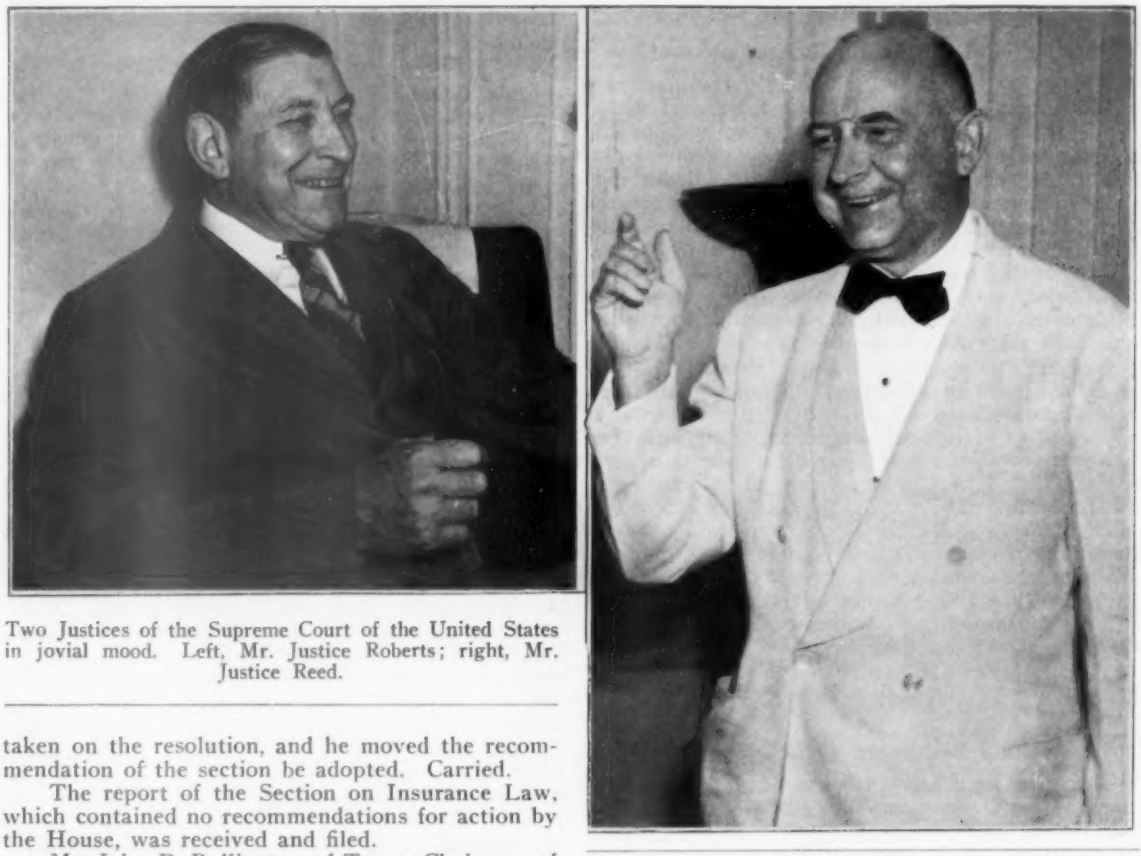
Resolutions providing for maintaining in the office of the American Bar Association in Chicago a full-time trained librarian with certain specifications as to staff and material, and providing for a full time Executive Secretary for the Section of Bar Organization Activities, with certain defined duties, as printed in the report, were then presented. The Chairman stated that the section was under no illusions as to the financial and other problems concerned in these two resolutions and instead of moving their adoption as worded, it had decided to submit a substitute resolution to the effect that the House of Delegates approve these resolutions in principle and refer them to the Board of Governors with power to take such action thereon as it might deem feasible and advisable after consideration of the financial and other questions involved.

Chairman Morris inquired if the House Committee on the report of the section had any comment to make. Mr. Nathan William MacChesney of Illinois, Chairman, stated that the Committee had approved the two original resolutions and, although there had been no opportunity for the committee to meet and consider the substitute, he was confident that it would approve it. On vote the resolution was adopted.

Chairman Weston Vernon, Jr., of New York, reported that the Junior Bar Conference had no recommendations or resolutions to offer at this time.

Report of Section on Criminal Law

Mr. Rollin M. Perkins, of Iowa, Chairman of the Section on Criminal Law, presented its report. A year ago, he said, the Association referred to the section for study and report, a resolution urging efforts to remedy the evils produced by the connection between politics and crime. The section had studied the resolution and felt that any report on it would be a meaningless generality without an elaborate factual study that the section is not in a position to make. It felt that it was probably a field for certain state and local Bar Associations rather than for the American Bar Association. The section, therefore, recommended that no action be



Two Justices of the Supreme Court of the United States in jovial mood. Left, Mr. Justice Roberts; right, Mr. Justice Reed.

taken on the resolution, and he moved the recommendation of the section be adopted. Carried.

The report of the Section on Insurance Law, which contained no recommendations for action by the House, was received and filed.

Mr. John P. Bullington of Texas, Chairman of the Section on International and Comparative Law, then presented its report.

Chairman Bullington stated that no recommendations were made in the report printed in advance, but that at the meetings of the section held during the week some eleven resolutions had been adopted. He presented them seriatim. The first commended the Department of Justice for its attention to the subject and urged the "Department of State to negotiate with foreign governments, subject to reciprocity, treaties or conventions providing for a more efficient and speedier method of obtaining evidence abroad for use in legal proceedings pending in this country." The reason for the resolution was that the United States, unlike most other large nations, has never made any treaties whereby witnesses could be compelled to attend and give testimony abroad for use in the courts of this country. The Department of State now, he understood, was willing to negotiate such treaties.

Mr. Oscar C. Hull of Detroit, Chairman of the House Committee appointed to consider the report, stated that the committee approved it. The resolution was thereupon adopted.

Other Resolutions of Section on International and Comparative Law

Chairman Bullington presented the next resolution, viz.: "That the subject of the diverse legislation on the subject of taking testimony abroad for use in litigation pending in the domestic jurisdiction of the various states of the United States be referred to the Commissioners on Uniform State Laws for their attention." The reason that it is desirable for the State laws to be uniform on the subject, he said, is that the treaties will probably set up a system and the State laws should follow that system in order to give the greatest advantage to the practicing attorney. The House Committee approved and the resolution was adopted.

The next resolution, the Chairman stated, grew out of a few decisions by the Supreme Court recently interpreting Section 131 of the Revenue Act which allows a credit for foreign taxes to American concerns doing business abroad. The result of these decisions is that American concerns will lose a good deal of the credit. The resolution, which had been submitted to the Chairman of the Committee on Federal Taxation and received his approval, was "That encroachments and indirect limitations on the credit for foreign taxes in Section 131 of the United States Revenue Act should be avoided in future legislation, and that existing encroachments or indirect limitations should be removed as soon as possible by amendatory legislation or by treaties." Adopted.

The next resolution, the Chairman said, represented an endeavor to procure the teaching of international law in law schools by lawyers rather than by political scientists. The second provision of the resolution commended the Department of State for the work it has recently done in making indexes to the treaties of the United States, so it is possible for a consul to find them. The resolution, approved by the House Committee, was adopted in principle

with the understanding that it was to be submitted to the Committee on Draft for a report as to form.

Resolution Condemning Bombardment of Undefended Places

The next resolution did not have such easy going. It read: "Resolved, That the Section on International and Comparative Law recommends that the American Bar Association condemn the bombardment of undefended places causing injury and death to thousands of unarmed civilians, including women and children, in the Spanish conflict and in the hostilities now in progress between Japan and China and urges that the governments and people of all nations protest against such outrages and take such measures as may be deemed appropriate to terminate such activities."

The Chairman added, by way of explanation, that the resolution was not intended to have any reference to the internal affairs of any other nation such as a proposed resolution with respect to affairs in Germany. There was no rule of international law forbidding any nation to take any action it pleased with respect to its own citizens or persons living in the country who were not aliens. However, there was a distinct rule of international law regarding the conduct of warfare on land. Those rules were quoted in the preamble to the resolution, and it was the purpose of this resolution simply to condemn the violation of a fixed rule of international law regarding the conduct of warfare on land.

Substitute Resolution by Mr. Beardsley

Mr. Charles A. Beardsley of California, was in complete sympathy with the spirit of this resolution, but he was concerned with the implication of the resolution to the effect that it is the province of the American Bar Association to criticize actions of governments and officials of other countries. He deemed it proper, however, that we should express our views to the government of the United States in reference to action that might be taken by the government of the United States outside of our own country, and with that purpose in mind, he offered an amendment to the paragraph that had just been read by the Chairman, to the following effect:

"Now, Therefore, Be It Resolved, That the American Bar Association approves the action of the government of the United States in protesting against and condemning, and urges the government of the United States to continue to protest against and condemn, the bombardment of undefended places, causing injury and death to thousands of unarmed citizens, including women and children, in the Spanish conflict and in the hostilities now in progress between Japan and China, and further urges the government of the United States to urge that the governments of other nations protest against and condemn such outrages, and that such governments take such measures as may be deemed appropriate to bring about a prompt cessation of all such unlawful activities."

Mr. Beardsley moved the adoption of the amendment. The Chair announced that Chairman Bullington was willing to accept it. Mr. Lee B. Byard of Minnesota, was recognized. He stated that, in his opinion, the principle stated in the resolution was inconsistent with the preamble and, further, that the adoption of the resolution would commit the Association to certain undesirable views as stated in the preamble. He moved that the second preamble be stricken from the resolution as amended.

Motion to Table Results in Tie

Mr. Grinnell of Massachusetts, moved that the whole resolution be laid on the table. A vote was taken and a division called for. The result was a tie—36 to 36. Chairman Morris then stated that in a matter of this sort the attitude of the Chair always was that, in the absence of a great emergency, debate should continue. The Chair therefore voted against the motion to table and the discussion proceeded.

Mr. J. Weston Allen of Massachusetts, suggested that the resolution was clear and might well be passed without any preamble. Mr. Thompson of Illinois, felt it would be better merely to eliminate the second part of the preamble, which had been objected to. Mr. Beardsley accepted the suggestion and embodied it in his motion to amend, which thereupon prevailed. The resolution as amended was then adopted.

The next resolution, Chairman Bullington stated, related to revision of the naturalization laws of the United States. That did not refer to the laws under which aliens may become citizens, but the laws which determine whether a given individual is or is not a citizen of the United States. Those laws, he added, are so conflicting and so confused that nobody now knows what they mean, and it is extremely difficult in many cases to determine whether an individual is a citizen of the United States or an alien. The matter has been under study for quite some time and a report has now been made, but that report has not been made public. The purpose of this resolution was to request the making public of that report and the revision of the Code of Naturalization Laws of the United States in order that people may determine whether they are citizens of the country. The resolution was then read and adopted.

Another resolution, emphasizing the necessity for the full and faithful observance of covenants among nations, was then presented and adopted. Chairman Hull of the House Committee had previously stated that it considered this and other following resolutions on general policy as borderline questions and it had no comment to make. The next resolution was that the Association favored "in principle the gradual reduction of legal barriers to commercial intercourse among nations." Rejected.

The next resolution was that the Association urge "the calling of a Third Hague Peace Conference, to be held as soon as adequate preparations therefore can be made."

Some Section Recommendations Meet Defeat

Mr. Ransom, of New York, did not think this was the kind of a question the House was qualified or well advised to pass on, under the present delicate conditions. His motion to lay on the table was carried. The same fate, on motion of Mr. Walter M. Bastian of the District of Columbia, met the resolution in which the Association approved, in principle, the further development of an international judiciary through the establishment of other permanent international courts of justice, including an inter-American tribunal of justice.

Again the section ran into heavy weather, in connection with its last resolution. It read: "Re-

solved that the American Bar Association heartily commends the present policy of the Department of State in the protection of the persons and the property of American citizens abroad."

Mr. Ransom, of New York, rose to a point of privilege. He wished to ask the Chairman of the Section to state what the present policy is. Chairman Bullington replied, "That is exemplified in a note of July 21 of Secretary of State Hull to Mexico, and it is to that note and its contents that this resolution is addressed. We had not known up to that time whether the 'Good Neighbor' policy of the present administration was going to prevent the Federal government from protecting the property and lives of its citizens in foreign countries. At the present time, if Secretary of State Hull means what he said in the note, they are."

Mr. J. Weston Allen, of Massachusetts, said: "As long as we have a Committee on International Law, we are supposed to consider questions of this character, and before a motion to lay this upon the table is made, I wish to commend this resolution as one which the American Bar Association can very well support in its policy of passing upon questions of international law so far as they affect the United States."

Mr. Nathan W. MacChesney, of Illinois, stated that as Chairman of the Advisory Committee of the Section of International Law, he agreed with what Mr. Allen had said. If the Section was to function, it must function in the field of international law, and it would seem that this was a proper body to give support to the government when its policies meet with our approval. He hoped the resolution would pass.

Resolution as to Policy of State Department Debated and Defeated

Mr. W. E. Stanley, of Kansas, inquired if it would not be better if there were included in the resolution a reference to the specific note which the Chairman says does embody that policy. He did not know what the policy had been until the note was promulgated and he did not know how long it would continue. Chairman Bullington regarded the suggestion as sound and was prepared to accept it.

Mr. Ransom, of New York, agreed that it is all right for reports to come from the sections which the House has to take more or less on the authority of the experts composing the sections, providing that matter is of such a sort that the members as citizens can pass intelligently upon it. But he did not think that the House or this Association was in any position to form and express an enlightened judgment with respect to a policy which of necessity and with the utmost propriety was subject constantly to change in this world of change. He therefore did not believe that any useful purpose of the Association would be served or any substantial aid given to the distinguished Secretary of State, by the passage of a resolution of this character. Mr. Carl B. Rix of Wisconsin, heartily endorsed what Judge Ransom had said. He thought one of the purposes of this body was to prevent the issuance of blank checks by any section or any agency of the Association committing the Association to policies about which we know nothing and over which we have no control. He moved the resolution be laid on the table.

Mr. Allen, of Massachusetts, thought if there was any body in this country which is capable of passing upon this fundamental question which has been before the United States during the period of the Spanish war and the undeclared war between China and Japan—the principle of the protection of the personal property of American citizens abroad—it was the American Bar Association. Mr. Byard of Minnesota, said that "in order to emphasize the highly controversial and political character of this resolution, and also to make it more realistic," he moved that the resolution be amended by striking out the word "protection" in the third line thereof, and substituting for it the word "non-protection." Mr. Rix, of Wisconsin, moved that the resolution and amendment be laid on the table. Carried.

Mr. James L. Shepherd, Jr., of Texas, chairman of the Section of Mineral Law, stated that its report contained no recommendations, so it was received and filed.

Report of Uniform State Law Commissioners Leads to Debate

The next order of business was the report of the National Conference of Commissioners on Uniform State Laws. Secretary Knight stated that the report had been left with the Secretary, with a statement that it contained no recommendations. The report indicated that it submitted eight or nine Uniform Acts, with the statement that they had already been submitted to the state legislatures.

At the suggestion of Chairman Morris, the secretary read the report. It stated that the following Uniform Acts had been finally adopted by the Conference: Uniform Aviation Liability Act, Uniform Air Jurisdiction Act, Uniform Law of Air Flight Act, Uniform Authorized Insurers Act, Uniform Property Act, Uniform Estates Act, Uniform Common Trust Fund Act, Uniform Absence of Death and Absentees' Property Act. All of these Acts, the report continued, had been recommended to the legislatures for adoption, subject to the following qualification: Although the Uniform Aviation Liability Act was finally approved, the Conference voted to extend to certain aviation organizations, which had sought to secure a postponement of action on it, the privilege of presenting to the committee in charge of the Act criticisms of its provisions on or before Dec. 1, 1938, with the understanding that "if this Committee and the Executive Committee of the Conference decide that any such criticisms justify a further consideration of the Act by the Conference, it will be withheld until after the next meeting of the Conference; otherwise the Act will be promulgated for adoption."

The Chair Makes a Pertinent Inquiry

Chairman Morris said that the Chair would like to know if the Conference now recommends to the States, upon its own motion, without reference to the Association, the adoption of these acts? Mr. MacChesney, of Illinois, replied that perhaps just a brief explanation of the new plan was in order. There had been a well justified criticism on the part of this House that it was being asked to rubber-stamp legislation coming from the National Conference, without real consideration. As a result of that, the President of the Conference, Mr. Armstrong, of Maryland, and Mr. Schnader, of Pennsylvania, the Chairman of the Executive Committee, conferred with a committee of the Board of Governors

of the Association and worked out a general plan whereby hereafter the administrative work of the Conference will be carried on in the office of the American Bar Association and the Conference will itself promulgate the Acts on its own responsibility, recommending them to the various States for adoption, but reporting the action that it has taken to the House of Delegates for its information without asking for adoption or recommendation. That is the status of those Acts which were recommended this year to the states for adoption. "They are now being reported to this House for your information without request for endorsement or action."

Chairman Morris replied: "It is not the function of the Chairman of the House to engage in any debate, but I must correct General MacChesney as to the agreement between the Sub-Committee of the Board of Governors and the Conference of Commissioners on Uniform State Laws. The Chairman happened to be a member of that Sub-Committee, and there was never any agreement, and there would have been an agreement only over the Chairman's dead body, that the Conference of Commissioners on Uniform State Laws should promulgate its own Acts without reference to the House of Delegates; so, General MacChesney, you are mistaken in that detail."

Action by the House Held to Be Necessary

Mr. Ransom, of New York, said that so far as he was concerned, he thought it would be highly unwise and improper that a body virtually a section of this Association, which receives one of our largest annual grants of money, should be permitted to recommend anything to the States of this country, where it was either expressly or impliedly stated that the American Bar Association had placed the stamp of its approval upon such submission.

"Our Constitution expressly forbids that, as to any agency of the Association," he continued. "Under those circumstances, I move that the Report of the Conference of Commissioners on Uniform State Laws be not approved by the House, and that here, as we did a year ago, we refer that report to the Board of Governors with power to grant *ad interim* approval of the Association. The only reason I make that motion, as I did a year ago, is that if we do not take some such action here, it might be that some Uniform Laws which ought to be promulgated would otherwise be held up until the mid-winter meeting of the House."

Secretary Knight seconded the motion of Judge Ransom, and stated further: "I was the Acting Chairman of the Sub-Committee of the Board of Governors that cooperated with a committee of the Executive Committee of the Commissioners. The agreement was drawn in writing and signed by the three members from each of the respective bodies, and there was especially embodied in that agreement, which was subsequently passed upon by the Board of Governors, and I was verbally informed by Mr. Armstrong, was passed upon affirmatively by the Conference, that all acts should be submitted to the House and that a plan of procedure should be worked out so that there could be a Committee from this House which could cooperate with them to expedite the work as much as possible."

Motion to Refer to Board of Governors

Judge Harrison A. Bronson, of North Dakota, stated that the pending motion, for which he desired to offer a substitute motion, didn't involve any particular disagreement between Judge Ransom and himself. His substitute was that the House receive the report and refer the subject matter to the Board of Governors for such action in the premises as it deems feasible and proper. As a member of the House of Delegates, he felt that we ought to have an opportunity, if we are not members of the National Conference, to investigate these Acts somewhat, but he did not agree with the idea that the American Bar Association should get into any controversy at all with the National Conference, because the Association created, in a way, and is sponsoring and supporting that Conference.

Mr. George B. Young, of Vermont, thought there had been a misunderstanding on the part of the Conference and this Conference Committee, as to what was expected. It was understood in the Conference that for some reason the Bar Association did not care to approve these Acts, but was willing that the Conference should put them out, recommend them to the States, and report them for information to the Association. Personally, he thought they should be approved by the Association, but one of the difficulties was the length of time it takes to prepare these Acts. They are worked over for a number of years by committees. If this House of Delegates is to take up those Acts in detail as the Conference of Commissioners has, it will have to have a lot more time. He thought some arrangement should be made by which there would be an acceptance of the work of the Conference here without going into the detailed study of the Acts, or the House should adopt the policy spoken of in this report, namely, receive them.

Mr. J. Weston Allen, of Massachusetts, stated that for five years, to his knowledge, these Acts after receiving the approval of the Commissioners have been submitted to the American Bar Association for approval. The approval of the American Bar Association has been a condition precedent to their being submitted to the states. He was heartily in favor of the motion which had been made by Mr. Ransom because he thought it met the suggested difficulty, that there might be undue delay. But he would suggest, if the latter would accept the amendment, that it should further say, "but no Act shall be submitted to the states until it has had the approval of the Board of Governors."

The Chair ruled that amendment out of order. The pending motion was that made by Judge Bronson as a substitute for that made by Judge Ransom.

Mr. Ransom did not believe Judge Bronson's motion fully met the situation. What was needed here was a refusal to accept a report which notifies of an independent submission of these proposed Acts to the states by the Conference. Unless the Conference was willing to relinquish the financial support of the Association, he did not think that the Conference should do any such thing. The report should be sent back to the Conference. He was sure the Acts would not go out to the States meanwhile. Let the Board of Governors do what it did last year, namely, pass upon these statutes. He would like to throw this suggestion on the table at this time—that the members of the Conference who are members of this House should from year to year constitute a Committee of the House charged with the duty of reporting to this House upon the recommendations of the Conference of a legislative character.

Effect on Legislatures of First Motion Suggested

Mr. W. E. Stanley, of Kansas, stated that the only reason he objected to Judge Ransom's motion

and supported that of Judge Bronson was that the former definitely stated that the Conference's action was disapproved by the House. The legislatures in some forty states would meet in January and there was a chance that the House's action might be misunderstood when the Acts were submitted to them. Judge Bronson's motion did not carry such a possibility of misunderstanding.

Mr. Sidney Teiser, of Oregon, offered a substitute resolution that a committee of the House be appointed by the Chair to consider the Uniform Acts adopted by the Conference on Uniform State Laws, that such a committee report to the Board of Governors, and that the Board have power to act; and that such procedure as herein outlined be the procedure hereafter required by this House.

Mr. MacChesney, of Illinois, said that in view of the fact that the Secretary had stated that there were two committees, one representing the National Conference and one the American Bar Association, which had reduced the procedure to be followed to a written memorandum, it seemed to him that that memorandum should be introduced in the record in connection with the debate. It might well be that he was misinformed as to the action agreed upon, but as Chairman of the National Conference Committee on Cooperation in connection with this general matter, it had been reported to him that hereafter the Acts were to be reported, but not for adoption by the House as the House desired to be relieved of that responsibility. He called attention to the fact that the President of the Conference and the Chairman of its Executive Committee apparently so understood the arrangement as their report was made in conformity with what he stated the understanding to be.

The Chair then put the question on Mr. Teiser's substitute. It was defeated. The question recurred on Judge Bronson's motion. Mr. Carl B. Rix offered a substitute that the House appoint a committee of its members, preferably, those who are also members of the Conference of Commissioners, to consider the report and study the Acts which have been adopted by the Conference and report thereon to the January meeting of the House.

Bronson Resolution Finally Adopted

Mr. W. E. Stanley, of Kansas, and Mr. Burt R. Cooper, of New Hampshire, opposed that motion on the ground of the delay which it would entail. Thereupon the question was put and the substitute failed. Judge Bronson's motion was thereupon put to a vote and prevailed, as the action of the House. Mr. MacChesney, of Illinois, in order to prevent misunderstanding, offered a motion that the Conference Secretary should be requested to do nothing about sending out these Acts until after action by the Board of Governors. Passed.

Report of Patent Section—Resolutions Adopted

Mr. Bert M. Kent, of Ohio, presented the report of the Section on Patent, Trade-Mark and Copyright Law. The section had had the largest attendance in its history. Its various recommendations were contained in a supplemental report which had been distributed to members. The first resolution favored the appointment of a supplemental Patent Advisory Committee, composed of experts in specialized non-governmental fields in which investigations concerning patents will probably be made, as an aid to the governmental agencies appointed to conduct monopoly investigations. It also recommended that a special committee of the Patent Law Section be created to express the sense of the foregoing to the governmental agencies and to make certain suggestions regarding the composition of the Advisory Committee.

After a brief interchange designed to clear up the resolution and a statement of approval from Mr. Allen, of Massachusetts, chairman of the House Committee to consider the report, the resolution was adopted. The following additional resolutions were put to a vote after a brief explanation by Chairman Kent and a statement of the House Committee's view by Mr. Allen:

A resolution that in order to assist such governmental agencies above mentioned the various Patent Law Associations throughout the United States make available to such agencies the composite experience of patent lawyers, as well as facts within the peculiar knowledge of clients of such lawyers. And as a means to the accomplishment of the foregoing, another resolution, that the special committee of the Patent Section above referred to should include in its functions the coordinating of information accumulated from its own activities and from the sources aforesaid. Both adopted.

A resolution dealing with the proposed treaty of adherence to the International Copyright Convention, and recommending "that there should be no such adherence until our own copyright law has been appropriately amended so as to adjust its provisions to the amendments of the Iternational Copyright Convention, and further, that adherence by the United States be with such reservations as will provide (a) conformity with Article 1, Section 8, of the Constitution of the United States by limiting copyrights to 'writings'; (b) preservation of full freedom of contract in respect of any works or writings therein, including but not limited to, so-called moral rights of authors; (c) complete protection against retroactive effects of adherence with respect to past and future uses which, but for adherence, would be in the public domain and lawful in the United States; (d) such reservations as would prevent a national of a foreign country securing rights in the United States greater than those enjoyed by citizens of the United States in the country of such national." Adopted.

A resolution that the Association disapprove H. B. 8508 pending in the present Congress which provides for the suspension of the issuance of patents for labor-saving machines and other purposes. Adopted. A resolution disapproving H. B. 7457 amending Section 14 of the Clayton Act, which is in substance and effect substantially the same as the Dill Bill which was disapproved by the Association several years ago. Adopted.

Further Resolutions Presented by Patent Section

A resolution disapproving H. B. 8607 of the present Congress providing that one of the Assistant Commissioners of the Patent Office shall be permanently assigned to matters relating to the registration of trademarks. Chairman Kent stated that it was believed that there was no reason for taking discretion away from the Commissioner as to one of the Assistant Commissioners. Passed.

A resolution "that the registration of trademarks used in interstate commerce is properly the subject of Federal legislation, and that proposals for enactment, or the enactment by the several States, of trademark registration statutes which are mandatory in their re-

quirements or which may have the effect of leading to conflicting and unharmonious legislation among the states are hereby disapproved." Adopted.

A resolution that the Association disapprove House Bills 9259, 9815 and 10068 relating to the granting of compulsory licenses under patents. Passed. A Resolution that the Association disapprove House Bill 10129 which provides for amendments to Section 4915 of the Revised Statutes relating to suits in equity to compel the issuance of patents, on the ground that the proposed amendments are unnecessary and harmful. Passed. A Resolution disapproving Senate Bill 475 having for its purpose the creation of a separate Court of Patents Appeals to which all appeals in patent cases from the District Courts of the United States throughout the country shall go. Passed.

A resolution that the Association favor repeal of the disclaimer statutes, these being Sections 973, 4917 and 4922 of the Revised Statutes, with the object of remedying the confused conditions resulting from recent court decisions; also, in order to avoid certain injustices which might result from that appeal, that a statute be passed with the following provision: "A judgment or decree holding one or more claims of a patent invalid shall not of itself render the patent invalid as to the remaining claim or claims and shall be binding only as between the parties, and their privies, to the suit in which such judgment or decree is entered. This section shall not affect the right of a plaintiff to continue the prosecution of any suit or action commenced prior to the effective date thereof." Carried.

Officers of Association Elected

Election of officers came next. Secretary Knight certified that the nominations made by the State Delegates at Washington in May for officers were as follows: President, Frank J. Hogan; Chairman of the House of Delegates, Thomas B. Gay; Secretary, Harry S. Knight; Treasurer, John H. Voorhees. He also certified that no nominations by petitions had been received for these offices.

Mr. Teiser, of Oregon, moved that the Secretary be instructed to cast one ballot for the nominees. This was done and Chairman Morris declared the nominees elected.

The fourth session of the House thereupon adjourned.

Fifth Session of House—Special Committee on Defense of Liberties Guaranteed by Bill of Rights Is Named—Midwinter Meeting of House in Chicago in January—Thanks to Cleveland Hosts

HOUSE backs up incoming President Hogan's plans by creating a Special Committee on the Defense of Liberties Vouchsafed by the Bill of Rights. It is declared on the floor that the step is not only worthwhile in itself and in line with what other important State and Local Bar Associations have done, but is one calculated to give an answer to those who are always inclined to impugn the motives and actions of the Association. State and Local Bar Associations and affiliated organizations are given the opportunity to present any matter to the House which they deem important to the profession. The National Conference of Bar Examiners presents recommendations concerning the technique of character examination for those applying for admission to the Bar and these are discussed and approved. Resolution that House hold a two-day meeting in Chicago, between the fifth and fifteenth of January, 1939, is adopted. A resolution concerning certain activities in Jersey City alleged to be subversive of constitutional rights is referred to the newly created Special Committee on Defense of Liberties Guaranteed by Bill of Rights. Resolution of thanks to the generous hosts in Cleveland is adopted enthusiastically.

THE Fifth Session of the House of Delegates convened at three-thirty o'clock Friday afternoon, July 29th, Chairman Morris presiding.

Immediately after the House had been called to order Mr. Crump asked consent to take up as a special order of business the following resolution:

Committee on Civil Rights Urged

"Whereas, it is desirable that the American Bar Association shall take immediate and practical steps to assure to American citizens that whenever rights or immunities vouchsafed by the Bill of Rights are anywhere denied to any citizen or threatened with denial, there shall be a speedy and impartial investigation of the facts, and where the facts warrant it, there shall be certainty of the assistance of competent lawyers and defense in protection of such rights in cases that might otherwise be undefended,

"IT IS HEREBY RESOLVED, That the American Bar Association hereby create a special committee on the Defense of Liberties Vouchsafed by the Bill of Rights, such committee to consist of nine members and to be authorized to take such steps as it deems proper to ascertain and make public what it believes to be the facts whenever there appears to have been any substantial violation of rights vouchsafed by the Bill of Rights, and to be further authorized to take such steps as it may deem proper, with the approval of the President of the Association, in the defense of such rights, in instances which otherwise might go undefended or lack adequate public presentation; such committee to be authorized to cooperate with state and local Bar Associations and with appropriate committees thereof, and to do such other things as may be necessary or proper and are authorized by the Board of Governors to carry out the purposes of this resolution."

Mr. Crump prefaced his introduction of the resolution with the statement that it was designed to carry out the suggestions of the newly-elected president, Frank J. Hogan, as contained in his address before the luncheon meeting of the Assembly that noon, as published in full in the August JOURNAL (page 615).

Mr. Hayes McKinney of Illinois suggested that

it was quite late in the session to be taking up such an important matter, particularly in view of the fact that it seemed to him that it touched upon the work and responsibilities of the state and local bar associations more than the field of the American Bar Association.

Mr. Osmer C. Fitts, of Vermont, asked that the action of the Junior Bar Conference with reference to the same subject matter be brought to the attention of the House. He indicated that he thought the action of the Junior Bar Conference in this regard had represented more than the Conference alone could handle, and that the subject ought to be taken up by the whole Association.

Reading of Junior Bar Resolution Requested

Mr. Weston Vernon, Jr., of New York, Chairman of the Junior Bar Conference, was requested to read the resolution adopted by the Conference, which he did. The resolution is as follows: "BE IT RESOLVED, By the Junior Bar Conference of the American Bar Association, as follows:

"1. There is hereby established a standing committee of the Conference on Civil or Personal Rights, which shall be composed of five members, one of whom shall be Chairman, appointed by the Chairman of the Conference for such terms and in such manner as are other conference committees. There is also established an Associate and Advisory Committee, to be composed of one member from each state, also appointed by the Chairman.

"2. It shall be the duty of the standing committee to prepare outlines and abstracts of speech material on civil or personal rights for the Public Information program of the conference, and to attend to the mimeographing and distribution of the same; to urge upon state and local Bar Associations the creation of committees on civil and personal rights, and to assist such committees; to undertake such investigations as it shall deem necessary or advisable of violations of civil or personal rights, and to report the results of such investigations to the Council with such recommendations as it shall care to make; to participate in the defense of, or to prevent any particular violation of, any civil or personal right when instructed so to do by the Chairman of the Conference with the approval of the President of the American Bar Association; and to report to the Chairman of the Conference when requested so to do by him, and to the Conference at annual meetings thereof.

"3. It shall be the duty of the Associate and Advisory Committee of the Conference, and of the individual members thereof, to assist the standing committees in such ways as it shall direct; and generally to disseminate information regarding the need of preservation of civil or personal rights.

"4. The Public Information program is hereby expanded to include such topics regarding civil or personal rights, and the need for the protection and preservation thereof, as shall be selected by the Civil Rights Committee, with the approval of the Executive Council."

Proposal to Create Civil Rights Committee Discussed

Mr. Grinnell voiced an objection as to bringing the matter up at the concluding session and stated that, in his belief, after having waited some time the Association "could wait until the January meeting before we get into defending the civil rights of every one of a hundred and thirty million people."

Mr. Harris of Ohio then moved to refer the matter to the Board of Governors with authority to consider it and report to the House of Delegates at the January meeting, and this motion was seconded.

At this juncture Judge Ransom voiced his hope that such a motion to refer would not prevail. This matter was one, he said, on which there had been a developing sentiment and activity among bar associations in several parts of the country. In New York State, the two largest local associations had recently adopted resolutions on the subject, for the active intervention of the Bar in the defense of situations where violations of the Bill of Rights have occurred. Other bar associations in other states are doing the same thing.

"These associations," he continued, "are looking to the American Bar Association for leadership and counsel and some measure of guidance in this field. They are entitled to have it; some unity of purpose and action is needed. The resolutions which have been adopted by the Association of the Bar have been forwarded here, in this field. It would be most unfortunate, I think, in view of the action which has been taken in the first place by our great Junior Bar Conference, which has been widely publicized in the country, and in the second place, in view of the very stirring statement made by the incoming President of the Association, if this House should fail to go forward with its project and set up at this meeting, rather than next January, the machinery for dealing with this developing and increasingly important subject."

Judge Thomson, of Illinois, took a similar position, stating that it would be a tragic thing if the resolution offered by Mr. Crump should fail of passage.

Mr. W. E. Stanley, of Kansas, felt that it would be most unfortunate if the House went on record as being against, or as willing to delay, the expression of a matter of policy of this sort.

Committee to Cooperate as to Matters Within Bill of Rights

The discussion of the resolution was concluded by Mr. Frank M. Drake, of Kentucky, who urged that deferring the matter until January would simply mean losing the psychological moment of interest in the affairs of the Association.

Mr. Harris withdrew his motion to refer the matter to the Board of Governors for report. Mr. Crump's motion was then adopted without show of dissent.

The next item of business was the report of the Section on Public Utility Law. Mr. Joseph F. Berry, of Connecticut, stated that the section had made no recommendations. Accordingly, the report was received and filed.

Section on Real Property, Probate and Trust Law

The next matter was the report of the Section on Real Property, Probate and Trust Law, presented by Mr. Nathan W. MacChesney, of Illinois. He stated that the report of the section was to be found on page 254 of the Advance Program, which portion contained no recommendations. A supplemental report, containing four recommendations, was being filed, however.

The first recommendation was that the Asso-

ciation authorize the fixing of the dues of the section at $1 per member as authorized by the Board of Governors and approved by the section in accordance with the By-laws of the Association, the manner of the billing of the dues to be agreed upon by the headquarters of the American Bar Association and the Chairman of the section. The Section understood, Mr. MacChesney stated, that the Board of Governors had agreed to this, subject to the approval of the section, and the section has approved it and instructed him so to report.

After a statement of approval by the House committee appointed to consider the recommendations of this section, the recommendation was adopted without discussion.

Recommendation Number Two, as read by Mr. MacChesney, was as follows: That the holding of legal institutes such as were held this year, be continued, but with the recommendation that they should form a part of the program of the sections, the subject matter of which is being considered, and that in no event should they be held in a field covered by a section without a conference with and approval of the section concerned."

Concerning Holding of Legal Institutes

He then stated that there was considerable objection upon the part of the Section of Real Property, Probate and Trust Law to the announcement of Professor Leach's courses without some consideration of the effect upon the program of certain duplicate subjects of the section itself. If the section had been aware that such an institute was to be held, he added, it would have been glad to waive some of the program so that there might be no conflict.

This recommendation led to considerable discussion as to whether the matter should be referred to the Board of Governors or acted upon by the House. The propriety of one section passing recommendations concerning the work of another (in this instance the Section on Legal Education and Admissions to the Bar) was also brought into the debate. It was finally decided that the matter be referred to the Board of Governors for "ironing out."

The third recommendation asked that the Uniform Real Estate Mortgage Act (as revised by the section) he referred again to the National Conference of Commissioners on Uniform State Laws for further consideration by that body. Except for a suggestion that a model Act might be preferable to a uniform Act of this sort, the recommendation was approved without discussion.

The fourth recommendation asked that the Section be authorized, at the discretion of the Chairman and Secretary, to proceed immediately with the publication of its reports, addresses, and proceedings, through the headquarters of the Association, the cost thereof to be charged against the anticipated collection of dues. Mr. MacChesney moved the reference of this to the Board of Governors, and this motion was adopted.

Character Examination Standards Urged

The next item of business was the presentation of any matters which any state or local Bar Association or any affiliated organization of the legal profession wished to bring before the House, and in this connection Mr. A. G. C. Bierer, Jr., of Oklahoma, appeared to speak for the National Conference of Bar Examiners. He stated that he wished to present a recommendation concurred in by the Section of Legal Education and Admissions to the Bar and the Conference.

In introducing the recommendation, he stated that both the Section and the Conference had during the past year devoted a substantial part of their interest and attention to the matter of the development of character examinations in the various states. The practice in the various states in the matter of character examination has varied widely, he said, and it had been considered desirable to attempt some steps toward standardization of character examination and especially to attempt rather searching inquiry into the means of character examination. The measure of success with which these various means may work was also inquired into.

The National Conference of Bar Examiners appointed a committee on the subject consisting of members of character examining committees of five different jurisdictions, very widely scattered throughout the country and representing various means of proceeding in this field. That committee canvassed the field in which the work was done, and, after considerable deliberation, made to the National Conference of Bar Examiners certain concrete recommendations, setting forth a program constituting at least an elementary technique on the subject of character examination and made those recommendations with the suggestion that they be adopted and approved by the Conference as they were. They were also approved by the Section of Legal Education.

Chairman Morris raised a question concerning these recommendations coming from the Conference of Bar Examiners rather than the Section on Legal Education, but Mr. Bierer explained that it was considered proper that they be presented by the Conference since they had originated in that body.

Details of Character Examination Recommendations

The recommendations were as follows:

"1. The applicant should be required to register at the beginning of law study and at that time submit to an examination of his character and fitness.

"2. That further study be made of the desirability of each applicant upon commencing the study of law being assigned to a sponsor in the locality in which the applicant lives in order that the applicant may have the benefit of advice and suggestions from an active practitioner during the course of law study and that, where found to be practicable, such a plan be adopted.

"3. A standard form of questionnaire should be adopted which will give information about the applicant to be used in addition to his application form, unless that form calls for the required information.

"4. Character and fitness committees should have the power to cause oaths to be administered and witnesses to be subpoenaed.

"5. Each applicant, particularly in the metropolitan districts, should be interviewed personally.

"6. Administrative machinery should be set up for the investigation of applicants where question-

naires or interviews show that further information is needed.

"7. We reiterate the position taken by the American Bar Association that a report of The National Conference of Bar Examiners should be required when an applicant is applying on a foreign license.

"8. Just before taking the Bar examination, the applicant should be required to submit to a final examination into his character and fitness.

"9. Local, state and national Bar Associations and other interested organizations should be encouraged to make a study of this problem and to do what they can to bring about the establishment of an adequate system in each jurisdiction to inquire into the character and fitness of applicants.

"10. In each jurisdiction, the court, legislature or other group which has control of admission to the Bar should be encouraged to continue a study of the problem with the view of obtaining better cooperation in setting up the necessary machinery, and after the necessary machinery has been set up with the view of getting the proper cooperation between the group which determines the requirements for admission to the Bar and those appointed to inquire into the character and fitness of applicants."

Recommendations Are Approved

Mr. Teiser, of Oregon, suggested that these provisions ought to be brought to the attention of the law schools, if possed, and that the schools should be requested to require any applicant to register before he is allowed to matriculate in the law school. Otherwise, he said, someone might begin the study of law who has not registered and it would affect his entire career. Mr. Bierer stated that they had found with respect to this, that, where the registration system is in effect, cooperation from the law schools in that regard has been almost universal; that upon entrance into a law school, the student is advised of the system and encouraged to register with whatever State Bar examining authority has charge of the registration.

Mr. Bernard Myers, of Pennsylvania, made a statement at this point concerning the excellent manner in which the character examination plan is working in his state, and Mr. James W. Chapman, Jr., endorsed the recommendation as having worked well in Maryland.

The motion that the recommendations be approved was put to a vote and adopted.

Chairman Morris then stated that the floor was open for the presentation of any matters which any section or any standing or special committee of the Association wished to bring before the House. He mentioned the forum on Federal regulation of commercial securities and asked if there was a report concerning it. Mr. Jacob V. Lashly stated that there was no report to make on which action need be taken, but "we had a very profitable open forum discussion of all those important and expanding problems in the field of pending legislation affecting the preparation and distribution of commercial securities. It was a fine cultural experience."

The next item on the agenda was the report of the Committee on Hearings. Mr. Slaton, a member, stated that the committee had no further report to make. (*Continued on page* 778)

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Formal Resolution for Mid-Winter Meeting of House of Delegates

The next item was the report of the Committee on Draft, presented by Mr. Essery, of Michigan, Chairman of the Committee. The first resolution concerned the mid-winter meeting of the House of Delegates. The committee offered the following:

"BE IT RESOLVED, That the House hold a two-day meeting in Chicago, Illinois, between the fifth and fifteenth days of January, 1939, on the call of its Chairman, and upon not less than sixty days' notice, as prescribed by the rules of procedure of the House of Delegates;

"That the Board of Governors be requested to fix the place of the meeting of the State Delegates for the purpose of nominating officers and members of the Board of Governors, at Chicago, Illinois, and to fix the time of such meeting so that it will immediately follow or precede the meeting of this House;

"That all Section Councils and Committees which intend to hold an interim meeting and which have appropriations therefor be requested to hold these interim meetings at Chicago in conjunction with such meeting of this House, if possible;

"That members of this House who are not entitled to reimbursement for their expenses from some other appropriation or association be reimbursed for any actual expenses necessarily incurred for railroad and Pullman fares for attendance at such interim meeting."

A motion was made, seconded and carried without debate that the resolution be adopted.

Jersey City Resolutions Referred to New Committee

Mr. Essery next reported on the resolution concerning certain alleged activities in Jersey City, adopted at the annual meeting of the Association of the Bar of the City of New York on May 10, 1938, which was received from Mr. Charles H. Strong, the delegate of that Association in the House, and referred to the Committee on Draft without debate. The committee suggested the following resolution as putting Mr. Strong's resolution in form applicable to and suitable for the action of the House:

"Whereas, It has been reported in the press, and not substantially denied, that citizens asserting the right publicly to express opinions on public questions have been forcibly deported from the State of New Jersey by the police of Jersey City, acting pursuant to the direction of their superior authorities, without complaint to any judicial officer of any violation or threatened violation of law, and without opportunity to be heard in their own defense; now, therefore be it

"RESOLVED, That this House condemns such acts, if committed as reported, as violations of the fundamental right of free speech, and deprivation of liberty without due process of law, and as a menace to our liberties, and that the Board of Governors take appropriate steps to make this resolution effective."

Mr. Sylvester Smith of New Jersey stated at this point, in defense of his State, that the newspaper reports were probably not denied by reason of the fact that denials might not establish the truth. He moved that the resolution be referred to the newly created Committee on Civil Rights, and this motion carried.

The next two resolutions reported on had been adopted at the recommendation of the Section on International and Comparative Law and referred to the Committee on Draft for revision as to form and phraseology. One concerned the machinery for obtaining evidence abroad and the other the teaching of International Law in the law schools. As redrafted they did not vary in substance from the recommendations previously adopted and they were adopted by the House without debate.

Board of Elections Reports

The next item was the report of the Board of Elections of which Judge Edward T. Fairchild, of Wisconsin, is chairman. Judge Fairchild read the report, which contained no recommendations for action by the House but did suggest that there should be notification or publication by some agency of the calculation of the forty-day period within which nominating petitions shall be filed. The Chair stated that unless somebody wished to take action on this matter, he would assume that the Secretary, who normally handled this sort of thing, had noted the suggestion, and would make the calculation in advance of the day when it becomes effective.

Another suggestion in the report was that petitioners sign their names in writing and accompany it with a list of typewritten names, so that the Board of Elections would be able to identify them as members of the Association.

The next matter was the report of the Committee on Credentials and Admissions which was read by Secretary Knight. It noted, principally, the retirement of George R. Murray and Royal J. Douglas, of the Ohio State Bar Association and the Utah State Bar, respectively, and the appointments of Howard L. Barkdull and W. Q. Van Cott to take their places.

Secretary Knight then read the report of the Board of Governors, stating that it recommended the approval of the By-Laws of the Section on Commercial Law. He stated that these were drafted after the uniform By-Laws as nearly as possible.

It was moved, seconded and carried that the reading of these be dispensed with and that they be approved.

Resolution of Hearty Thanks to Cleveland Hosts Adopted Unanimously

Mr. D. A. Simmons of Texas at this point presented the following resolution:

"Whereas, The Sixty-first Annual Meeting of the American Bar Association, in session in the City of Cleveland, Ohio, during the week beginning July 25, 1938, has been one of the most interesting and profitable meetings in the history of the Association; and

"Whereas, The members of the Association and the members of their families, who have come from far and near to this meeting, have received a most generous and hospitable welcome; now, therefore, it is hereby

"RESOLVED, That the House of Delegates of the American Bar Association, speaking for the members of the American Bar Association, hereby express their sincere gratitude to the Ohio State Bar

(Continued on page 788)

Publishers' Report of Progress on

AMERICAN JURISPRUDENCE

IN THE October, 1937, issue of this Bar Association Journal we listed seventy-two major text treatments then in the hands of AMERICAN JURISPRUDENCE subscribers.

During the last year thirty-five new titles, each of which makes available a thoroughly reliable, modern text treatment of the subject, have been delivered to subscribers.

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LAWYERS CROWD INSTITUTE ON WILLS AND TRUSTS

By Will Shafroth, Advisor to Council on Legal Education

THE largest number of lawyers ever to attend any section or committee meeting of the American Bar Association were on hand in the Little Theatre of the Cleveland Auditorium for Professor W. Barton Leach's opening lecture on the drafting of wills and trusts, on Wednesday afternoon of the convention week. On Thursday the crowd increased to between six and seven hundred and the Friday morning lecture was also well attended.

The Legal Education Section, which sponsored these lectures, was desirous of avoiding conflicts with other sections and committees and therefore, with the permission of the Program Committee, the Board of Governors scheduled them during the time the House of Delegates was in session. The response of the lawyers at the convention to this new feature gave assurance that similar institutes would constitute a permanent part of future convention programs.

Practical Treatment Secret of Success

Naturally the subject and the lecturer for any institute are of prime importance. Why is it that Professor Leach has been so eminently successful in his lectures to lawyers, not only at Cleveland but in all parts of the country? His field is that of Future Interests, in many ways one of the most abstract and theoretical in the law. As the reporter of the Restatement on that part of the law of property dealing with powers of appointment, he is known as an authority on this subject. But neither his qualifications nor his known ability as a lecturer entirely account for his success. Rather it is the very practical treatment which he gives to this difficult subject.

His topic at Cleveland was "The Drafting of Wills and Trusts: The Use of Powers of Appointment and the Avoidance of the Rule Against Perpetuities." His first lecture dealt with powers of appointment and he started in by saying he was considering the subject from the point of view of the draftsman rather than from that of the lawyer who had been employed to conduct litigation in this field. There are no lawyers in general practice to whom the drafting of such documents is not important and Professor Leach's main thesis that the great value of the use of powers of appointment is not generally recognized is always of keen interest to his hearers. He calls the power of appointment "the most efficient dispositive device that the ingenuity of Anglo-American lawyers has ever worked out," and says that an increasing number of lawyers have discovered in the last twenty-five years that the power of appointment is the answer to more of the problems which face the draftsman of wills and trusts than any other device.

An Illustration of the Practical Method

As an illustration of his generalization that wills and trusts tend to be too short, he takes the following example of the kind of omissions which so often cause real tragedy in the family: "A gives property to his son B for life, remainder to his son's widow for her life, remainder to his son's children. Now the son gets into marital difficulties. He and his wife agree that there should be a divorce, and one or the other of them goes to Reno. Of course it is familiar knowledge that there is a wide distinction between the practice and the theory of domiciliary jurisdiction for divorce. In theory that divorce in Nevada is void in law. We also know that if the widow appears in that action, it estops her from setting up its invalidity. The divorce is practically efficient as between the parties, but the persons to whom I am going to refer now are those who, in the outline I have referred to, are the innocent bystanders.

"The son marries again, marries W, a second wife; and they have children. Those children are illegitimate; and we know that the word 'children' as used in a will or trust means legitimate and not illegitimate children. Moreover, that second wife is not a wife, because when that instrument uses the word 'wife' it means actual legal wife; and the first wife *is* a 'wife' within the terms of the will. Hence, by the great weight of authority, upon the death of the son B the property will pass to the first divorced wife for her life (a thing which of course your testator did not intend) and none of the children of the second marriage of B can possibly take.

"It follows that something has got to be done in instruments which use the words 'wife' or 'children' or 'issue,' in order to protect against any Reno divorce. There is an old rule that a gift to future-born illegitimates is invalid because of the inducement to immorality that is potentially involved. Hence you would certainly pause before you would say in your will that 'children' included all illegitimate children. But I submit that there is no substantial possibility that there would be any invalidity in a clause which should provide that where B has children by a woman with whom he is living as husband and wife after the performance of a marriage ceremony, those children shall be deemed 'children' within the meaning of this will in spite of lack of domiciliary jurisdiction as to a divorce which either B *or that woman* may have participated in.

"It should be habitual to put provision in every will which makes a gift to widow or issue or children of some person, to exclude the widow as to whom a divorce decree has been rendered, regardless of the domiciliary jurisdiction, to include the second wife who has gone through a marriage ceremony, regardless of the fact that the decree of divorce of one of those spouses was invalid for lack of jurisdiction, and to include the children of that second marriage."

This is an illustration of the highly practical manner of Professor Leach's treatment.

Survey of Common-Law Rule Against Perpetuities

The second and third lectures, according to the "Outline" furnished those in attendance was designed (1) to give a general survey of the common-law Rule against Perpetuities and the technique of its application; (2) to warn practitioners as to the common types of situations in which the Rule constitutes a particularly dangerous threat to the draftsmen of wills, trusts, deeds and leases (3) to suggest common misapplications of the Rule which can be avoided by Courts before whom such issues arise *de novo*.

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NOTE: Additional Standing and Special Committees not completed at the time JOURNAL went to press, will appear in next issue.

SUMMARY OF THINGS DONE AT CLEVELAND

CREATED a Committee on the Defense of Liberties Vouchsafed by the Bill of Rights empowered to act, with the approval of the President of the Association, in instances where violation of such rights would go undefended, and to cooperate with committees of state and bar associations engaged in similar work.

Approved some sixty-six recommendations for the improvement of practice and procedure emanating from the Section of Judicial Administration. (These are set out in digested form elsewhere in this issue of the JOURNAL.)

Approved the principle in S. 3212 (the "Ashurst Bill") creating an Administrative Office of the United States Courts with a director at the head thereof.

Added to the Standards of Legal Education a requirement that to be approved a law school must in the judgment of the Council on Legal Education possess reasonably adequate facilities and maintain a sound educational policy, subject to review by the House of Delegates on adverse decisions of Council.

Approved allowing representation in the House to the Dallas and Seattle Bar Associations.

Amended the Constitution so as to make the terms of State Delegates run from the adjournment of Annual Meeting following their election.

Gave Puerto Rico separate representation in the House of Delegates.

Provided for the appointment by different agencies of separate committees on Admissions and Memberships in each state.

Defeated a proposal to amend the Constitution, so as to throw the nomination and election of officers on the floor of the House at the time of the Annual Meeting.

Defeated a proposal to amend the Constitution so as to make all nominations for office by petition.

Directed the Committee on Rules and Calendar to study the matter of nominating officers and report back to the House.

Approved the holding of a midwinter meeting in Chicago in January, 1939.

Created a Section on Commercial Law, which was organized and began its activities at the Cleveland meeting.

Reaffirmed its approval of the provisions of S. 680 extending the admiralty and maritime jurisdiction of the United States to all cases of damages or injuries to persons or property on land done by a vessel in navigable waters.

Approved the principle that salvage of aircraft lost in navigable waters should be regulated by rules of maritime law and authorized preparation of legislation to that end.

Approved the creation of a central agency to forward better plans of judicial selection, referring the matter of detail to the Board of Governors.

Reaffirmed the belief of the Association in uniform legislation, invited the members to aid in securing the action of legislatures in this regard.

Resolved that committees on State Legislation should be appointed in each state to cooperate with the committee of the Association on this subject.

Directed the Committee on Federal Taxation to study and report upon procedural difficulties incident to competing claims of states in levying death taxes on decedents' estates.

Urged permanence of position for officials who control tax collection and determination policies.

Urged that provisions in tax laws which cause taxpayers to entertain just grievances, which are difficult to understand and which tend to diminish income in future years, should be avoided as leading to drying-up of sources of revenue.

Directed the Committee on Federal Taxation to advise with authorities with the view of developing ways of maintaining and strengthening certain desirable principles in the administration of revenue laws.

Instructed the Committee on Federal Taxation to cooperate with the authorities in searching for ways and means of eliminating obscure provisions in the present revenue laws and the avoidance of such provisions in the future.

Recommended an amendment to Section 112 of the Revenue Act of 1938 so as to specify that the present provisions as to gain or loss in exchange of securities on corporate reorganization apply regardless of provisions as to the assumption of debts.

Recommended that the discharge of an obligation at less than face value should not be recognized as income unless the discharge occurs in the same taxable year as that in which the obligation was created.

Urged the repeal of Section 820 of Revenue Act of 1938, but directed the Committee on Federal Taxation to confer with proper authorities as to other methods of effectuating the original purpose of the section.

Authorized the appointment of a special committee to urge the repeal of Section 803 of the Revenue Act of 1938, which requires lawyers to fill in certain forms in connection with the organization or reorganization of a foreign corporation.

Recommended the continuance of the Advisory Com-

mittee on Rules for Civil Procedure in the Federal Courts.

Reaffirmed approval of provisions in H. R. 2271 as a method of removing federal district judges providing the bill be amended so as to provide for a court of seven circuit judges, to allow an appeal on all questions of law and that on questions of material and controlling facts an appeal should be allowed if one judge dissents.

Recommended restoration of the expense allowance of federal district judges to ten dollars per day.

Approved in principle S. 3069 providing for the intervention of any state in a federal court when a statute of the state is being attacked.

Disapproved H. R. 9211 relative to preliminary hearings on petition for naturalization.

Made the advocacy of these recommendations a special program of the Association for the coming year, and urged the appointment of committees in the several states to aid in the work.

Favored the enactment of the provisions of S. 1625 allowing federal district judges to appoint official stenographers.

Approved of making criminal the rendering of any service for any person or corporation by any member of Congress, officer or employee of the United States, or national officer of a political party before federal administrative agencies in any matter involving quasi-judicial determination of individual rights.

Urged the extension of civil service to all persons, other than cabinet officers and assistant secretaries of departments, who are engaged in quasi-judicial rather than policy-making activities.

Urged that the subject of training for administrative position and practice be given greater consideration by the law schools and by the practitioners in this field.

Urged enactment of the provisions of H. R. 19 which would devote the income from the bequest of Mr. Justice Holmes to a collection of works on jurisprudence in the Law Library of Congress.

Asserted that it is the duty of the Bar to uphold and increase the scope of the merit system in public employments—national, state and local.

Approved of the appointment of state and local bar association committees on the economic condition of the legal profession, to cooperate with committee of the American Bar Association on the same subject, in surveys to ascertain the facts in this matter, and in considering ways and means of improving the economic status of the lawyer.

Urged the enactment of a Federal Sales Act substantially in the form of H. R. 7824.

Authorized the Committee on Commerce to cooperate with any governmental commission making a survey of the Anti-Trust Laws and to urge in this connection the consideration of the principles adopted by the Association on this subject in 1935.

Disapproved of the provisions of H. R. 10250 which would amend the Federal Employers' Liability Act by abolishing the defense of assumed risk in certain cases.

Authorized the Committee on Legal Publications and Law Reporting to join with representatives of the Association of American Law Schools and the American Association of Law Libraries to continue the study of the problems involved in the duplication of legal publications.

Recommended to state and local bar associations the holding of legal institutes and courses for practicing lawyers.

Approved of making a suitable award to the state and local bar associations which have done the most outstanding work each year.

Approved the holding of regional conferences annually in each of the federal circuits.

Approved in principle a proposal that a full-time Executive Secretary be provided for the Section on Bar Organization Activities, referring the matter to the Board of Governors for investigation as to feasibility.

Urged the Department of State to negotiate treaties to the end that a more efficient method of securing evidence abroad might be brought about.

Urged that the Uniform State Laws Commissioners consider the problem of diverse legislation in the several states on the matter of taking evidence abroad.

Resolved that encroachments and indirect limitations on the credit for foreign taxes in Section 131 of the Revenue Act of 1938 should be eliminated and avoided in the future.

Urged the teaching of international law in law schools by lawyers rather than political scientists.

Commended the Department of State for providing indexes of treaties.

Approved the action of the United States Government in protesting against and condemning the bombardment of undefended civilians in Spain and China.

Urged that the report on and the revision of the Code of Naturalization Laws of the United States be made public.

Resolved that the full and faithful observance of treaties was of prime necessity in international affairs.

Favored the appointment of a group of patent experts to advise with any governmental agencies investigating monopolies and the appointment of a special committee of the Patent Section to aid in forming the above group.

Recommended that adherence to the International Copyright Convention should be delayed until appropriate amendments have been made in the existing copyright laws of this country and that adherence in any event should be made with certain reservations as set out in the proceedings.

Disapproved provisions of H. B. 8508 which suspend the issuance of patents on labor-saving machinery.

Disapproved provisions of H. B. 7457 which would amend the Clayton Act in substantially same manner as the proposed Dill Bill of several years ago.

Disapproved of the provisions of H. B. 8607 which would provide that one of the Assistant Commissioners of the Patent Office shall be permanently assigned to the registration of trademarks.

Disapproved of proposed state legislation on trademark registration.

Disapproved of the provisions of House Bills 9259, 9815, and 10068 relating to granting of compulsory licenses under patents.

Disapproved of the provisions of H. B. 10129 which would amend Section 4915 of the Revised Statutes relating to suits in equity to compel the issuance of patents.

Disapproved of the provisions of S. 475 which would create a separate Court of Patent Appeals.

Favored repeal of Sections 973, 4917 and 4922 of the Revised Statutes of the United States dealing with disclaimers, and the enactment of a statute which would provide that the holding of one or more claims of a patent invalid would not of itself render the patent invalid as to other claims.

Approved a number of recommendations as to the method by which the character of applicants for admission to the bar of any state should be examined. These recommendations are set out in full in the report of the proceedings of the Fifth Session of the House of Delegates elsewhere in this issue of the JOURNAL.

Rejected resolution relating to validity of Justice Black's appointment.

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CLEVELAND'S HOSPITALITY is GRATEFULLY REMEMBERED

CLEVELAND'S hospitality was one of the unforgettable things about the Annual Meeting. It was all-pervading and created an atmosphere in which the serious work of the Association and its subsidiary and auxiliary bodies was done with added efficiency. The impression of friendliness and efficient helpfulness greeted the visitors on their arrival and was deepened as the meeting moved on to its close.

This hospitality was efficiently organized, directed and executed by the Executive Committee and the various other committees which discharged special functions in the really tremendous task of arranging for a meeting of the American Bar Association. The visitors felt and appreciated the smoothness of its operation. However, probably few of the male visitors realized the ability and work which were behind it all. Their wives and daughters, with the natural feminine eye for detail, and their experience of what hospitality costs in time and effort no doubt were better able to understand what Cleveland lawyers and their ladies had done.

The entertainment program was certainly full and attractive, and it furnished novel features which were greatly enjoyed. Among these unique attractions the play, "Libel," given three times by remarkably competent actors in The Playhouse, one of Cleveland's most famous and successful local institutions, comes first to mind. The visitors crowded the theatre to see this authentic representation of the processes of English Justice in court, written by an English lawyer, and telling a story of mistaken identity in a tense, dramatic fashion. Presentation of this play was a happy inspiration of the Cleveland hosts.

Other unique features of the program which were greatly enjoyed were the trip to Nela Park, the home of the General Electric Institute, widely known as "Lighting Headquarters of the World," where demonstrations of proper lighting, from the home to the greatest public structures, are given to the public; and the Ice Carnival at the Arena, one of the newest and most modern sport Coliseums in America, where the visitors were entertained with a marvelous exhibition of skill in the form of figure skating and other glacial sports.

The ladies in particular were loud in their praise of the many courtesies extended. Luncheon and bridge at the Country Club, with its charming site in a picturesque, rolling country some fifteen miles distant from the city, was one of the outstanding events on the program. The Garden tours, affording visitors an opportunity to view some of the magnificent local gardens in the vicinity, were also enjoyed by many of the guests. The Fashion Show at Higbee's, one of the great local stores, likewise proved attractive.

Provision for entertainment of the Junior Bar was made with an eye to the almost infinite capacity of the younger lawyers for being entertained and to their well known social proclivities. There was a tea dance and a dinner dance for them, not to mention other functions. In addition to all this, entrance to various country clubs afforded all the guests, young and old, all possible opportunities for golf, tennis and swimming.

It was a great meeting, and in its process the activities of the Cleveland hosts played a very large part. The thanks of the Association and of the members and their ladies who attended are due to the numerous committees who contributed so largely to its success. In partial but of course wholly inadequate acknowledgment of their efforts, we print herewith the names of those who were especially active in the work of making preparations for and entertaining the Annual Meeting.

The Executive Committee in Charge of Arrangements consisted of the following: Lawrence C. Spieth, Chairman; H. Austin Hauxhurst, Vice-Chairman; C. F. Taplin, Jr., Secretary; W. T. Smith, Treasurer; Howard L. Barkdull, Dan B. Cull, L. B. Davenport, Tracy H. Duncan, Walter L. Flory, George B. Harris, Thomas H. Jones, Howell Leuck, John H. Orgill, Stanley L. Orr, Frank H. Pelton, W. B. Stewart and Eugene E. Wolf.

The following were at the head of other committees:

Finance Committee—Tracy H. Duncan, Chairman.

Reception Committee—Hon. Paul Howland, Chairman; Hon. Adrian G. Newcomb, Vice-Chairman.

Junior Bar—William C. Warren, Chairman; James Arthur Gleason, Vice-Chairman.

Headquarters and Information Committee—Robert H. Jamison, Chairman; A. B. Cook, Vice-Chairman.

Transportation Committee—Frank X. Schantz, Chairman; F. R. Zettelmeyer, Vice-Chairman.

Club Courtesies Committee—Frank H. Pelton, Chairman.

Play House Committee—Cary R. Alburn, Chairman.

Ice Carnival Committee—H. L. F. Kreger, Chairman.

Hospitality Committee—George B. Harris, Chairman.

The Ladies' Executive Committee consisted of the following: Honorary Members—Hon. Florence E. Allen, Mrs. Newton D. Baker, Mrs. Harold H. Burton, Mrs. Paul Jones, Mrs. Samuel West, Mrs. Carl Weygandt; Members—Mrs. Charles K. Arter, Mrs. Howard L. Barkdull, Mrs. Howard F. Burns, Mrs. Edward C. Daoust, Mrs. L. B. Davenport, Mrs. John B. Dempsey, Mrs. R. F. Denison, Mrs. James H. Griswold, Mrs. Joseph G. Fogg, Mrs. Marc J. Grossman, Mrs. George B. Harris, Mrs. H. A. Hauxhurst, Mrs. Paul Howland, Mrs. Alfred Kelley, Mrs. W. T. Kinder, Mrs. J. C. Logue, Mrs. McAlister Marshall, Mrs. Henry A. Marting, Mrs. Wm. A. McAfee, Mrs. John P. Murphy, Mrs. Adrian G. Newcomb, Mrs. Harry F. Payer, Mrs. Lawrence C. Spieth, Mrs. Elliott T. Stearns and Mrs. A. B. Thompson.

Following are the chairmen of the other Ladies' Committees:

Reception Committee—Mrs. William A. McAfee,

Chairman; Mrs. Edward C. Daoust, Vice-Chairman; Mrs. L. B. Davenport, Vice-Chairman.

Hostess Committee—Mrs. A. B. Thompson, Chairman; Mrs. James H. Griswold, Vice-Chairman; Mrs. John B. Dempsey, Vice-Chairman.

Woman Lawyers' Committee—Miss Marie R. Wing, Chairman.

AN interesting undertaking of the Law Library of Congress is the printing and distribution of legal textbooks printed in Braille for the use of the blind. Mr. W. A. Roberts is Director of this "Project." The following announcement, headed "Special Limited Edition of Legal Textbooks" and dated March 18, 1938, gives details:

"As an experiment in the distribution of expensive reference-books, ten copies of each of the following textbooks have been distributed, on the basis of one to each Federal Judicial District, to the Distributing Libraries in Atlanta, Chicago, Cincinnati, Denver, New York, Philadelphia, Sacramento, St. Louis, Washington (Library of Congress), and Watertown:

Anson, Sir William R.—Principles of the law of contract.....10v.
*Brown, Ray Andrews—A treatise on the law of personal property..15v.
*Goodrich, Herbert F.—Handbook on the conflict of laws..... 8v.
Harper, Fowler Vincent—A treatise on the law of torts.....14v.
*Madden, Joseph W.—Handbook of the law of persons and domestic relations .....13v.
Mechem, Floyd R.—Elements of the law of partnership..... 9v.
Miller, Justin—Handbook of criminal law .....11v.
Morgan, Edmund M.—Introduction to the study of law..... 2v.
Ogden, James Matlock—The law of negotiable instruments.....11v.
*Patterson, Edwin W.—Essentials of insurance law ..... 6v.
*Walsh, William F.—A treatise on equity .....10v.
*Walsh, William F.—A treatise on mortgages ..... 7v.
Wigmore, John H.—A students' textbook of the law of evidence.. 8v.
*Ordered but not yet distributed.

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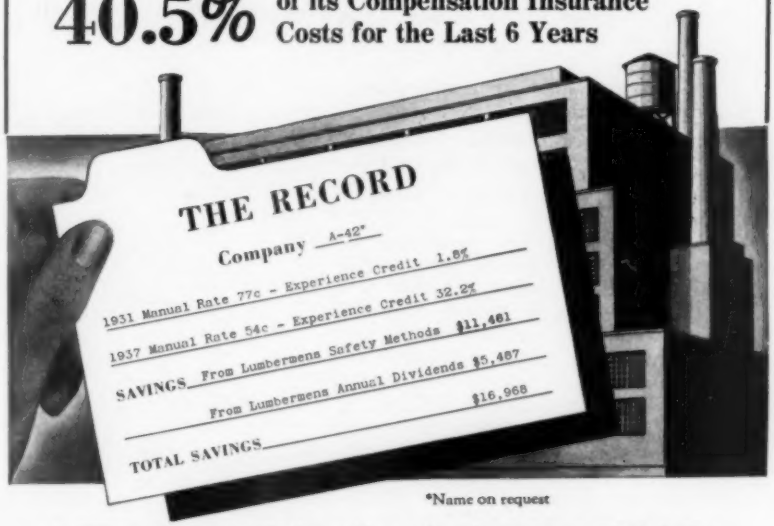

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Fifth Session of House of Delegates

(*Continued from page 778*)

Association, the Cleveland Bar, the Committee of Ladies, the City of Cleveland, its officials and citizens, for the hospitality that will long be remembered and appreciated by all, and also the press for the excellent publicity given the proceedings of the Association."

A motion to adopt the resolution was put to a vote and unanimously carried.

Mr. Stanley, of Kansas, asked approval for the following resolution which was given without debate. "Resolved, That the Board of Governors give consideration to the creation of a committee to investigate and report plans for the creation of an endowment fund for the American Bar Association and the administration of the same." He stated that lawyers were frequently in a position to advise as to bequests and that it was only right that the Association in view of its services in the field of law and government should receive some consideration in this regard.

Judge Ransom made a motion at this time that where action taken by the House of Delegates upon any Section report involved the presentation of legislation to any legislative body, such presentation should be under the supervision of the President and the Board of Governors.

Disapproval of Method of Handling Section Recommendations

In the discussion of this motion Mr. Byard, of Minnesota, said that under the present method of dealing with the reports of sections and committees, the members of the House were continuously being called upon to approve matters which they did not understand and under circumstances where they could secure no adequate information.

"I think," he continued, "that an unintelligent and uninformed approval is no approval at all. It cheapens the approval implied by the Association. We are being continuously called upon to commit the entire prestige and power of the Association in fields where it seems to me such approval is neither desirable nor necessary."

He then moved as a substitute for the pending motion that the Chair appoint a special committee to consider and study, with the cooperation of the Board of Governors, the entire matter of dealing with the reports of the committees and sections. It was pointed out by the Chairman that this matter was under consideration by the Committee on Rules and Calendar and it was agreed, therefore, that the substitute motion was unnecessary.

Judge Ransom then observed that while he was sympathetic with Mr. Byard's position, the latter's motion was not in any event a proper substitute for his. After the Ransom motion had been read again it was adopted without further discussion.

Mr. Stanley next proposed that the Board of Governors be instructed in future to delete from reports of committees and sections recommendations which simply ask for reaffirmation of action which had already been taken by the House of Delegates.

Chairman Morris suggested that as a matter of procedure the instruction should go to the Committee on Rules and Calendar, and as amended the motion was carried.

Secretary Knight made a further report from the Board of Governors at this time recommending to the House an approval of an amendment to the By-laws of the Section of Patent, Trademark and Copyright Law, the effect of which is to impose dues of one dollar per annum per person on the members of the Section. The report made the same recommendation as to an amendment to the By-Laws of the Section of Real Property, Probate and Trust Law.

Motions to adopt the recommendations were made, seconded and carried without discussion.

New Chairman Comes to Platform

Chairman Morris at this point invited to the platform Mr. Thomas Benjamin Gay, of Virginia, the newly elected Chairman of the House of Delegates, and, as he was coming to the platform, Mr. Monte Appel, of Minnesota, rose and said: "In recognition of the able and impartial manner in which he has presided over our deliberations, I move that the House of Delegates give to the retiring Chairman a rising vote of thanks."

Chairman Morris ruled this out of order, stating the Chair would have to declare that privately he had his emotions with regard to it, but that it was out of order to commend or thank any officer of the Association.

As Mr. Gay, of Virginia, was introduced the audience again arose and applauded. The following are Mr. Gay's remarks in full: "Gentlemen of the House, it is not my purpose to subject you to the thousandth and sixty-eighth speech which will have been delivered before this Association adjourns. I do, however, wish to express to you the very deep sense of appreciation which I feel for the high honor which you have conferred upon me. I am deeply sensible of the responsibilities which it imposes upon me.

"I shall endeavor to discharge them with an eye single to the proper discharge of the business of the House, fairness and impartiality for all of its members. If I shall succeed in this, I will feel that I have merited in some respects the confidence that you have reposed in me.

"You will agree with me, I am sure, that any man who assumes the duties of this office in succession to the distinguished Chairman who has just vacated it, undertakes a real job. Now I am going to do in a word what you have just done, by repeating what I feel to be the distinction he has added to the office to which I am succeeding, and I ask your sympathetic indulgence in an effort to carry on the work to which he has added such distinction."

This statement was applauded vigorously, after which Chairman Morris declared the final session of the House and the Annual Meeting adjourned.

Fourth Session of Assembly

(*Continued from page 748*)

lines and certainty of titles. It is recommended that inasmuch as this is a committee of the section of the Association, the matter be referred to it for its consideration. I move the adoption of that report." Adopted.

President Vanderbilt announced the subject of the Ross Bequest Essay Contest for the coming year: "To What Extent Should Decision of Administrative Bodies Be Reviewed by the Courts?"

The final session of the Assembly thereupon adjourned.